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GENEVA CONVENTIONS  
FOR THE  
PROTECTION OF WAR VICTIMS.

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1: ANALYSIS  
OF THE  
CONVENTION RELATIVE TO THE  
TREATMENT OF PRISONERS  
OF WAR,

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cV.13



February, 1955.



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A STATEMENT OF THE TREATMENT OF PRISONERS OF WAR AS  
PRACTICED BY THE UNITED STATES

The United States, from the time of the Revolutionary War, has accepted the customs of nations with regard to the humanitarian treatment of prisoners of war and has sought to apply the concepts of international law to prisoners of war in its custody. The principle that the treatment of prisoners of war, as regards quarters, food and medical care, should be comparable to that provided for our own troops located in the same area has been steadfastly subscribed to and practiced by this government.

Emphasis, during the Revolutionary War, the War of 1812, the War with Mexico and to some extent during the Civil War, was placed on exchanges, voluntary enlistments, paroles and in some instances the use of prisoners of war as instruments of real or threatened retaliation. During each of the aforementioned wars in which the United States has engaged, frequent exchanges of able-bodied prisoners of war were effected during the course of hostilities. Paroles were granted whereby prisoners were not only given their liberty within prescribed limits in the United States, but also in return for their promises not to engage in further military activities against the United States, many were released on parole to their respective countries. Although not a widespread practice and never a popular one with the military commanders, prisoners were recruited during both the Revolution and Civil War for service in the United States Army. The use of prisoners of war as instruments of retaliation and to force concessions from the enemy was often threatened and sometimes practiced until as late as the Civil War. The billeting of prisoners in private homes was a common practice up until and including the War with Mexico. Frequently prisoners were employed by the families with whom they were billeted and, in addition to lodging and food, received such wages as were mutually agreed to between them and their employers. When not employed, reimbursement to the families for food and lodging furnished the prisoners was made by the Government. Medical care was also provided at government expense.

The Civil War was a period of transition as regarded the discontinuance of certain earlier practices and the introduction of other practices which have continued to be followed and further developed during World Wars I and II. The exchanging and paroling of able-bodied prisoners, during the course of hostilities, continued into the Civil War but, for reasons of military expediency, were largely discontinued during the latter period of that war and have not since been revived. With greater emphasis on security and because of the larger numbers involved, prisoners of war were not billeted in private homes during the Civil War. Instead, the present practice of establishing prisoner of war camps in which prisoners are interned under close guard was established. Although the labor potential of the large number of prisoners in its custody was recognized by the North, the employment of prisoners of war for other than work involving their own maintenance never materialized. Of

particular interest is the fact that it was during the period of the Civil War that, at the request of President Lincoln, Dr. Francis Lieber, a recognized expert in the field of international law, prepared a code known as "Instructions for the Government of the Armies of the United States in the Field." This code, containing 35 articles dealing with prisoners of war, was promulgated to the Union Army as General Order No. 100, dated 24 April 1863, and was the first codification of international law relative to prisoners of war ever issued by a government as a directive to its armed forces in the field. The most basic of the humanitarian principles of the 1929 and 1949 Geneva Conventions may be traced back to this document.

In World War I, prisoners of war were for the first time, extensively employed on work other than that connected with their own maintenance. Construction and repair of roads and railroads were among the most common types of work in which the unskilled prisoners were utilized. Employment on work having a direct relation to military operations was prohibited. All prisoners were interned in prisoner of war camps the locations of which were usually determined by labor demands. Although not entirely a new practice (during the War of 1812 representatives of the enemy powers were permitted to visit and inspect United States prisoner of war camps), visits to the prisoner of war camps by members of neutral legations and embassies and by accredited agents of relief societies were permitted. A Theater Prisoner of War Information Bureau, with essentially the same functions as the Information Bureaus provided for by the 1929 and 1949 Geneva Conventions, was established by the American Expeditionary Force in Europe during World War I.

World War II introduced no material changes to World War I practices in the handling and treatment of prisoners of war. The provisions of the 1929 Geneva Conventions were promulgated through army regulations and directives setting forth in great detail and with much exactitude the procedures to be followed in the handling and care of prisoners of war. War Department Technical Manual 19-500, "Enemy Prisoners of War", and Field Manual 27-10, "Rules of Land Warfare", in particular, provided detailed guidance concerning all matters pertaining to prisoner of war administration, finance, transfers, employment and compensation, reports and records, and a multitude of other subjects. In addition, an Enemy Prisoner of War Information Bureau was established in the United States. All pertinent information concerning initial captures, places of internment, transfers, releases, repatriations, escapes, admissions to hospitals, deaths, courts-martial, and other matters affecting the individual welfare or status of each of the several millions of prisoners of war held in custody by the United States during World War II was forwarded by the individual camps to the Information Bureau for permanent recording and transmittal to the Powers served by the prisoners.

Treatment accorded prisoners of war by the United Nations Command during the Korean conflict followed the humanitarian principles of the 1949 Geneva (POW) Convention and, generally, the procedures prescribed

during World War II were adhered to as closely as was possible and practicable. A new aspect of the handling of prisoners of war was encountered in that pro-Communist prisoners, even after capture, continued by intrigue and open violence to fight against their captors. Increased physical security of the camps and additional guard personnel were required to counteract these efforts.

Judged by the standards and customs of the respective periods during which the United States has held prisoners of war in custody, it has been the continuing practice of the United States, not only to meet, but to exceed the requirements of international law and the customs of nations relative to the humanitarian treatment of prisoners of war. A review of the 1929 and the 1949 Geneva (POW) Conventions clearly reveals that the administrative and humanitarian practices established and adhered to by the United States for the treatment of prisoners of war held in its custody anticipated and, to a major degree, were the forerunners of the detailed provisions of the two Conventions.



# TABLE OF COMMON ARTICLES

Certain articles of the four Geneva Conventions on War Victims are common to all or two of the Conventions. The analysis of the article common to all four conventions are found in the Prisoners of War convention, the analysis of those common to only two conventions is found in the Wounded and Sick Convention. These common articles are listed below:

GWS	GWS (Sea)	GPW	GC
1	1	1	1
2	2	2	2
3	3	3	3
4	5	-	-
6	6	6	7
7	7	7	8
8	8	8	9
9	9	9	10
10	10	10	11
11	11	11	12
12	12	-	-
13	13	-	-
14	16	-	-
16	19	-	-
17	20	-	-
36	39	-	-
37	40	-	-
39	41	-	-
40	42	-	-
45	46	-	-
46	47	-	-
47	48	127	144
48	49	128	145
49	50	129	146
50	51	130	147
51	52	131	148
52	53	132	149
54	45	-	-
55	54	133	150
56	55	136	151
57	56	137	152
58	57	138	153
59	58	134	-
60	59	139	155
61	60	140	156
62	61	141	157
63	62	142	158
64	63	143	159

ARTICLE 1, GWS  
ARTICLE 1, GWS Sea  
ARTICLE 1, GPW  
ARTICLE 1, GC

Substance

Requires parties to respect and ensure respect for the Conventions in all circumstances.

Present text

GWS: Art. 1:

"The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances."

Previous texts

GWS: Art. 25, para. 1, GWS 1929:

"The provisions of the present Convention shall be respected by the High Contracting Parties under all circumstances."

GWS Sea: None.

GPW: Art. 82, para. 1, GPW 1929:

"The provisions of the present Convention must be respected by the High Contracting Parties under all circumstances."

GC: None.

### Possible questions

Q. Does this article require the United States to enact legislation punishing violations of the Conventions?

A. No. A member of the United States delegation specifically stated his country's understanding that this article would not require the enactment of laws (2B Final Record, Dipl. Conf. of Geneva 53).

Q. How inclusive is the term "in all circumstances"?

A. (1) The term includes all wars, whether the war is just or unjust, or one of aggression or resistance to aggression.

The report of the International Red Cross Conference indicates that the High Contracting Parties were not to confine themselves to implementing the provisions of the Convention, but they must also do everything in their power to ensure that the humanitarian principles on which the Convention is founded shall be universally applied. (Draft Revised on New Convention for the Protection of War Victims, p. 5).

(2) Several of the provisions relating to the general protections of civilians state that "as far as military considerations allow" and "to the fullest extent of the means available to it" the Parties will carry out certain functions. (See Articles 16, 18, 55 GC). This is an explicit recognition by the drafters of the Convention that in many areas compliance with the Convention is necessarily limited by the attending circumstances. Thus, in the interpretation of Article 1, the phrase "in all circumstances" is in many instances limited to what the existing military situation and the means available will allow.

(3) See also paper on Recourse in event of violations of the Conventions. (Gen. Con. 8).

ARTICLE 2, GWS  
ARTICLE 2, GWS Sea  
ARTICLE 2, GFW  
ARTICLE 2, GC

Substance

Conventions are applicable to declared wars, other international armed conflicts between Parties, and occupations of territory of Party, even if unresisted.

Parties are bound by Conventions in their mutual relations and in relations with non-Party which accepts and applies the Conventions.

Present text

GWS: Art. 2:

"In addition to the provisions which shall be implemented in peacetime, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them.

"The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.

"Although one of the Powers in conflict may not be a party to the present Convention, the Powers who are parties thereto shall remain bound by it in their mutual relations. They shall furthermore be bound by the Convention in relation to the said Power, if the latter accepts and applies the provisions thereof."

Previous texts

GWS: Art. 25, para. 2, GWS 1929:



"If, in time of war, a belligerent is not a party to the Convention, its provisions shall nevertheless remain in force as between all the belligerents who are parties to the Convention."

GWS Sea: Art. 18, Convention of 1907 for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention:

"The provisions of the present Convention do not apply except between Contracting Powers, and then only if all the belligerents are parties to the Convention."

GPW: Art. 82, para. 2, GPW 1929:

"In case, in time of war, one of the belligerents is not a party to the Convention, its provisions shall nevertheless remain in force as between the belligerents who are parties thereto."

GC: None.

#### Background

a. "or any other armed conflict": The insertion of this phrase was made necessary by the fact that the humanitarian purposes of the law of war are as relevant to international armed conflict without declaration of war as to declared war. For example, in the "China Incident" which began in 1937, there were no declarations of war and no declarations of neutrality, notwithstanding the fact that large bodies of troops were involved in the hostilities. It was also necessary to take account of the large number of instances in which states have not declared war or have refused to recognize a state of war, even though they are engaged in international hostilities of considerable magnitude.

b. "all cases of partial or total occupation \* \* \* even if the said occupation meets with no armed resistance". In the Nurnberg Judgment, it was held that the German occupation of Bohemia and Moravia was "a military occupation covered by the rules of warfare", even though the occupation took place without active hostilities (Nazi Conspiracy and Aggression, Opinion and Judgment (1947) 160).

c. "Although one of the Powers in conflict may not be a party to the present Convention, the Powers who are parties thereto shall remain bound by it in their mutual relations." Article 2 of Convention No. IV of The Hague of 1907 provided in Article 2 (the so-called "si-omnes" provision) that:

"The provisions contained in the Regulations

referred to in Article I, as well as in the present Convention, do not apply except between Contracting Powers, and then only if all the belligerents are parties to the Convention."

The effect of this stipulation was that if only one out of a large member of belligerents was not a party to this Convention, none of the parties thereto were bound, even in their relations inter se. Paragraph 2 of Article 25 of GWS 1929 and paragraph 2 of Article 82 of CPW 1929 do not impose a similar restriction.

d. "the Powers who are parties \* \* \* shall be bound by the Convention in relation to the said Power [not a party to the Convention], if the latter accepts and applies the provisions thereof": This provision applies only if the non-signatory both (1) agrees to apply the agreement and (2) actually does so in practice. If the non-signatory fails to abide by the Convention, the signatory state is not bound by it and is released from its obligation to apply its provisions. (2B Final Record, Dipl. Conf. of Geneva 128).

Possible questions

1. Q. If a party to the Conventions is engaged in a war with a state not a party to the Conventions, must it apply those Conventions to the state not a party?
  - A. No. As between hostile states, the treaties apply only if both belligerents are parties to the Conventions.
2. Q. Do the Conventions apply to civil wars?
  - A. No, with the exception of Article 5, q. v.
3. Q. Is a party to the Conventions bound by them in its relations to a state which, while a party to the Conventions, does not abide by them?
  - A. If a state showed persistent and flagrant disregard for the provisions of the Conventions, there would probably be a basis for concluding that that state had denounced the Conventions by its conduct and that other states were no longer bound by the treaties in their relations with the offending state. Undoubtedly, the violations of the treaties which would justify a conclusion that they had been denounced by conduct would have to be much more than scattered violations of individual articles. Reprisals against the persons or property of prisoners of war, including the wounded and sick, and of the persons protected by the Geneva Civilian Conventions of 1949 are forbidden. (Art. 13, GPW; Art. 33, GC).
4. Q. What would be the situation if the United States were allied in war with a state not party to the Geneva Conventions of 1949?
  - A. The United States would remain bound by the Conventions in its relationships with the enemy, and persons within its power would be protected by the treaties. Victims of the war in the custody or under the control of a state allied with the United States but not a party to the Conventions would benefit from the protection of such conventions as might be in force between that nation and the enemy state.

ARTICLE 3, GWS  
ARTICLE 3, GWS Sea  
ARTICLE 3, GPW  
ARTICLE 3, CC

Substance

In armed conflict not of an international character (such as civil war), persons who take no active part in the hostilities, including prisoners who have laid down their arms and those placed hors de combat, are to be treated humanely. These provisions do not affect the legal status of the parties.

Present text

GWS: Art. 3

"In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

- "(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth, wealth, or any other similar criteria.

"To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:  
(a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;  
(b) taking of hostages;  
(c) outrages upon personal dignity, in particular humiliating and degrading treatment



(d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

"(2) The wounded and sick shall be collected and cared for.

"An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

"The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

"The application of the preceding provisions shall not affect the legal status of the Parties to the conflict."

#### Previous texts

None.

#### Background

This article has no counterpart in the previous conventions and was inspired by the desire to achieve some protection for the victims of civil strife, such as the Spanish Civil War.

The actual drafting of the article occasioned great difficulty.

It was the position of the United States delegation that the Conventions should be made applicable to armed conflict not of an international character when the following conditions are met:

(1) The insurgents must have an organization purporting to have the characteristics of a state,

(2) The insurgent civil authority must exercise de facto authority over persons within a determinate territory.

(3) The armed forces must act under the direction of an organized civil authority and be prepared to observe the ordinary laws of war, and

(4) The insurgent civil authority must agree to be bound by the provisions of the Conventions. (2B Final Record, Dipl. Conf. of Geneva 12).

Other states proposed that the article should provide that:

a. Certain articles of the Conventions referring to the humane treatment of victims of war be made specifically applicable to armed conflicts not of an international character. This was the Soviet view (2B Final Record, Dipl. Conf. of Geneva 97-8, 129).

b. The conventions in their entirety be applicable to civil strife in which the rebels had been recognized as belligerents.

Some fear was expressed lest the lawful government be subject to the restrictions of the Conventions while the insurgents would not be. A proposed solution was a requirement of reciprocal treatment by the two parties to the internal conflict.

It proved impossible for the Conference to agree on any of the proposed formulations. The outcome of prolonged debates in committee and in plenary session was a compromise text which speaks only in very general terms about the protection of the victims of war, states that the parties to the conflict may attempt to bring the Conventions into force in whole or in part, and specifically provides that the application of humane treatment required by the article shall not affect the legal status of the parties to the conflict.

Possible Questions

1. Q. What type of situation is this article intended to deal with?
  - A. Essentially with civil wars. It has no application to international conflict.
2. Q. Would it apply to riots or civil disturbances in this country?
  - A. No. The Committee report on this article states "It was clear that this [armed conflict not of an international character] referred to civil war, and not to a mere riot or disturbances caused by bandits" (2B Final Record, Dipl. Conf. of Geneva 129).
3. Q. Does it permit the punishment of rebels?
  - A. Yes. The Chairman of the United States delegation pointed out that "Every government had a right to put down rebellion within its borders and to punish the insurgents in accordance with its penal laws" (2B Final Record, Dipl. Conf. of Geneva 12). Paragraph (I)(d) of the Article recognizes the right to try by requiring the application of certain judicial guarantees to such proceedings.
4. Q. How can this article bind the rebels, who are not parties to the Conventions?
  - A. Probably on the basis that the insurgents are nationals of a Contracting Party, who can internationally bind all of the citizens of the State concerned (see statement of Greek delegate at 2B Final Record, Dipl. Conf. of Geneva 94). However, the juridical basis of the obligation imposed on rebels is not altogether free from doubt.

ARTICLE 4

SUBSTANCE

Sets forth the categories of persons who are entitled to treatment as prisoners of war and to the protection of the Convention.

PRESENT TEXT

"A. Prisoners of war, in the sense of the present Convention, are persons belonging to one of the following categories, who have fallen into the power of the enemy:

- "(1) Members of the armed forces of a Party to the conflict, as well as members of militias or volunteer corps forming part of such armed forces.
- "(2) Members of other militias and members of other volunteer corps, including those of organized resistance movements, belonging to a Party to the conflict and operating in or outside their own territory, even if this territory is occupied provided that such militias or volunteer corps, including such organized resistance movements, fulfil the following conditions:
  - "(a) that of being commanded by a person responsible for his subordinates;
  - "(b) that of having a fixed distinctive sign recognizable at a distance;
  - "(c) that of carrying arms openly;
  - "(d) that of conducting their operations in accordance with the laws and customs of war.
- "(3) Members of regular armed forces who profess allegiance to a government or an authority not recognized by the Detaining Power.
- "(4) Persons who accompany the armed forces without actually being members thereof, such as civilian members of military aircraft crews, war correspondents, supply contractors, members of labour units or of services responsible for the welfare of the armed forces, provided that they have received authorization from the armed forces, which they accompany, who shall provide them for that purpose with an identity card similar to the annexed model.
- "(5) Members of crews, including masters, pilots and apprentices, of the merchant marine and the crews of civil aircraft of the Parties to the conflict, who do not benefit by more favourable treatment under any other provisions of international law.
- "(6) Inhabitants of a non-occupied territory, who on the approach of the enemy spontaneously take up arms to resist the invading forces, without having had time to form themselves into regular armed units, provided they carry arms openly and respect the laws and customs of war.

"B. The following shall likewise be treated as prisoners of war under the present Convention:

- "(1) Persons belonging, or having belonged, to the armed forces of the occupied country, if the occupying Power considers it

necessary by reason of such allegiance to intern them, even though it has originally liberated them while hostilities were going on outside the territory it occupies, in particular where such persons have made an unsuccessful attempt to rejoin the armed forces to which they belong and which are engaged in combat, or where they fail to comply with a summons made to them with a view to internment.

- "(2) The persons belonging to one of the categories enumerated in the present Article, who have been received by neutral or non-belligerent Powers on their territory and whom these Powers are required to intern under international law, without prejudice to any more favourable treatment which these Powers may choose to give and with the exception of Articles 8, 10, 15, 30, fifth paragraph, 58-67, 92, 126 and, where diplomatic relations exist between the Parties to the conflict and the neutral or non-belligerent Power concerned, those Articles concerning the Protecting Power. Where such diplomatic relations exist, the Parties to a conflict on whom these persons depend shall be allowed to perform towards them the functions of a Protecting Power as provided in the present Convention, without prejudice to the functions which these Parties normally exercise in conformity with diplomatic and consular usage and treaties.

"C. This Article shall in no way affect the status of medical personnel and chaplains as provided for in Article 33 of the present Convention."

#### PREVIOUS TEXTS

This section was intended to replace the earlier provisions which are quoted below:

#### 1907 Hague Regulations

"Art. 1. The laws, rights, and duties of war apply not only to armies, but also to militia and volunteer corps fulfilling the following conditions:

1. To be commanded by a person responsible for his subordinates;
2. To have a fixed distinctive emblem recognizable at a distance;
3. To carry arms openly; and
4. To conduct their operations in accordance with the laws and customs of war.

"In countries where militia or volunteer corps constitute the army, or form part of it, they are included under the denomination 'army'.

"Art. 2. The inhabitants of a territory which has not been occupied, who, on the approach of the enemy, spontaneously take up arms to resist the invading troops without having had time to organize themselves in accordance with Article 1, shall be regarded as belligerents if they carry arms openly and if they respect the laws and customs of war.



"Art. 3. The armed forces of the belligerent parties may consist of combatants and noncombatants. In the case of capture by the enemy, both have a right to be treated as prisoners of war."

Geneva Conventions of 1929

TITLE I. GENERAL PROVISIONS

Article I.

"The present Convention shall apply, without prejudice to the stipulations of Title VII;

"(1) To all persons mentioned in Articles 1, 2 and 3 of the Regulations annexed to the Hague Convention respecting the laws and customs of war on land, of October 18, 1907, and captured by the enemy.

"(2) To all persons belonging to the armed forces of belligerent parties captured by the enemy in the course of military operations at sea or by the conditions of capture. However, such derogations shall not infringe upon the fundamental principles of the present Convention; they shall cease from the moment when the persons captured have rejoined a prisoners-of-war camp."

TITLE VII. APPLICATION OF THE  
CONVENTION TO CERTAIN CLASSES OF CIVILIANS

Article 81

"Individuals who follow armed forces without directly belonging thereto, such as newspaper correspondents and reporters, sutlers, contractors, who fall into the enemy's hands and whom the latter thinks expedient to detain, shall be entitled to be treated as prisoners of war, provided they are in possession of a certificate from the military authorities of the armed forces which they were accompanying."

BACKGROUND

1. Substantive Changes

Subparagraph 3 recognizes a new class which is entitled to recognition as prisoners of war--soldiers owing allegiance to a government not recognized by the Detaining Power. Members of crews of the Merchant Marine and of civilian aircraft fallen into enemy hands are now treated as prisoners of war rather than as civilian internees unless eligible for more favorable treatment. Demobilized soldiers are now afforded the protections of this convention.

2. Past Practice of the United States

Paragraph 70, Rules of Land Warfare (1940) provides:

Definition. Except as otherwise hereinafter indicated, every person captured or interned by a belligerent power because of the war is, during the period of such captivity or internment, a prisoner of war, and is entitled to be recognized and treated as such under the laws of war.

This definition includes more persons (notably civilians) than appear to be within the purview of the 1929 Geneva Convention.

The persons who were regarded as being eligible for prisoner-of-war status under Article II of the 1929 Convention include:

Wounded and sick-subject to the care that must be taken of them...the wounded and sick of an army who fall into the power of the other belligerent shall be prisoners of war, and the general rules of international law in respect to prisoners shall be applicable to them.

Levee en masse - The citizens who rise en masse to defend their territory or district from invasion by the enemy, if captured, are entitled to be treated as prisoners of war.

High civil functionaries - High civil functionaries such as the sovereign and members of the royal family, the president or head of a republican state, and the ministers who direct the policy of a state are liable to be made prisoners of war whether accompanying any army or not.

Civil officials and diplomatic agents - Civil officials and diplomatic agents attached to the army may be made prisoners of war.

Inhabitants - Persons whose services are of particular use to the hostile army or its government, such as the higher civil officials, diplomatic agents, couriers, guides, etc., also all persons who may be harmful to the opposing state while at liberty, such as prominent and influential political leaders, journalists, local authorities, clergymen and teachers, in case they incite the people to resistance, may be made prisoners of war.

Hostages - When a hostage is accepted he is treated as a prisoner of war.

1929 GPW	1949 GPW
Art. 2 (Red Cross)	Art. 14, GWS Art. 16, GWS Sea
Art. 1	Art. 4, GPW
	Arts. 41- 43; 79 et seq., GC Art. 4, GPW
Art. 1	Art. 4, GC
	Arts. 41- 43; 79 et seq., and Arts. 64 and 66, GC
	Art. 34, GC

The United States has chosen, in the past, to treat certain interned civilians as prisoners of war, since their status was not otherwise specified by conventional or customary international law.

### 3. WW II Problems

a. Commando and airborne troops. In October 1942, Hitler issued the "Commando Order" that enemy troops encountered during commando operations, even if uniformed members of the armed forces, were to be exterminated and that no quarter should be given them. Such conduct was regarded as a war crime by the Nurnberg Tribunal (Nazi Conspiracy and Aggression, Opinion and Judgment 57 (1947)) as well as by United States military tribunals (In re Dostler, 1 War Crimes Reports 22) and by British military courts (In re von Falkenhorst, 11 War Crimes Reports 18; In re Buck et al, 5 War Crimes Reports 39).

b. Resistance movements. When in June 1944 the Allied forces began the invasion of France, the "French Forces of the Interior" were constituted as a military force under the command of a high French military officer. They were recognized by the Supreme Commander of the Allied Expeditionary Force as forming an integral part of the troops commanded by him and a formal announcement to that effect was made. In his communique of 15 July 1944 General Eisenhower warned the enemy to cease treating such persons as franc-tireurs and declared that any German treating them thus would have to face the consequences (Grob, The Relativity of War and Peace 269-270 (1949)).

### 4. Diplomatic Conference at Geneva

#### a. Militias, volunteer corps and resistance movements.

There was unanimous agreement about the necessity of defining in harmony with the Hague Regulations, the categories set out in the first paragraph. For this reason it was decided to reproduce expressly the four conditions which these Regulations imposed on militias and corps of volunteers.

During the preparatory work for the Conference, and even during the Conference itself, two tendencies were observed with regard to the treatment of resistance forces. According to one of these, partisans must fulfil the conditions laid down by the Hague Regulations if they are to benefit by the provisions of the present Convention. Furthermore, they should also fulfil certain additional conditions. Thus, according to the advocates of this thesis, the organized resistance movement must be in proper control of its formations and subordinate units. Moreover, those in command of partisans should be in a position to receive communications and to reply to them. According to the other view, resistance movements should not be bound too closely by additional conditions which might be arbitrarily interpreted by the Occupying Power.

The problem was finally solved by assimilation of resistance movements to militias and corps of volunteers not "forming part of the armed forces" of a Party to the conflict. It was likewise determined that these corps and militias might legally operate in or outside their own territory even if it were occupied. While the Geneva Conference

was under the impression that an important change had been made in the law, it is improbable, in fact, that many members of underground forces will come within this definition. GPW continues to give adequate protection to the regular forces of a belligerent against irregular forces which attack them.

b. Forces of Unrecognized Governments

The same experience showed also that prisoner-of-war status should not be refused to members of the armed forces of a regular government for the simple reason that the Detaining Power did not recognize that government. This point is dealt with in subparagraph 3.

c. Civilians Accompanying the Forces

Subparagraph 4 reproduces in a more up-to-date form the text of Article 81 of the 1929 Convention. The discussion showed the danger of making possession of an identity card a condition of affording prisoner-of-war status to persons enumerated in the paragraph; the text has taken this point into account, and the card is not to be considered sine qua non.

d. Crews of Ships and Aircraft

Subparagraph 5 is also an important innovation. As a result of the experience of the recent war, there was unanimous agreement that it was preferable to treat members of crews of the Merchant Marine fallen into enemy hands as prisoners of war, rather than as civilian internees. It was considered advisable to add the crews of civil aircraft, and to reserve to both the most favourable treatment which might be accorded them by virtue of other stipulations of International Law (particularly the XIth Hague Convention dealing with capture in Naval War.)

e. Levee En Masse

In subparagraph 6 the idea of the "levee en masse" was reproduced textually from the Hague Regulations. Proposals to include under subparagraph 6, civilian populations who rise en masse in response to a radio appeal and civilians who rise spontaneously in occupied areas, were not accepted.

f. Demobilized Soldiers

Subparagraph 1 of the second paragraph covers a category not before included in conventional international law, viz., demobilized soldiers in occupied territory who are arrested by the Occupying Power because of their membership in the army of the occupied country. To avoid the treatment which such persons have some times suffered, it was considered necessary that they should be specifically protected by the Convention in case of arrest.



g. Military Personnel Interned in Neutral Countries

Finally, subparagraph 2 of the second paragraph, giving military personnel interned in neutral countries the protection of the Convention, defines the regime which they shall be accorded; this was dealt with only perfunctorily in the Vth Hague Convention. The category intentionally excludes prisoners escaped to neutral countries, and others who, in principle, should not be interned. The situation of the escaping prisoner of war who gains entrance to a neutral country is to be distinguished from the situation under which a neutral country receives bodies of troops on its soil and is permitted to intern them.

h. Rights of Civilians in Unlawful War

Certain delegations wished to extend the application of the Convention to cover still other categories of persons. They had particularly in mind civilians who had taken up arms to defend their life, their health, their livelihood, under an attack which violated the laws and conditions of war and desired to ensure that such civilians falling into enemy hands should not be shot after summary judgment but should be treated accordingly to the revisions or at least the humanitarian principles of the Convention. Numerous possible solutions of this problem were carefully considered but in the end a majority of the Committee came to the conclusion that it would be difficult to take the course proposed without the risk of indirectly weakening the protection afforded to persons coming under the various categories of Article 3. One delegation pointed out, in particular, that the acceptance of the proposed extension would be tantamount to rejecting the principles generally accepted at the Hague, and recognized in the Prisoner of War Convention. It was, according to the views of this delegation, essential that war, even illegal war, should be governed by those principles. Nevertheless, another delegation asked that The Summary Record should mention that no objections had been raised, during the discussion in the Special Committee, against his view that Article 4 could not be interpreted in such a way as to deprive persons, not covered by the provisions of Article 4, of their human rights or of their right of self-defense against illegal acts.



POSSIBLE QUESTIONS

1. Q - Are the categories listed under this Article exclusive, or can other classes of persons not specifically enumerated be afforded the protections provided in the Convention?

A - These categories appear not to be exclusive, and the Detaining Power can afford the protections of the Convention to others, such as guerrillas, not specifically enumerated. As noted earlier, under the 1929 Convention, the U.S. in its implementation thereof included several other categories of persons other than those specifically listed as eligible to be treated as prisoners of war.

## ARTICLE 5

SUBSTANCE

Requires application of the Convention to persons described in Article 4 from the time they fall into the power of the enemy and until their final release and repatriation and requires that persons who have committed a belligerent act and have fallen into the hands of the enemy shall, if their status under Article 4 is in doubt, enjoy protection of the Convention pending determination of their status by a competent tribunal.

PRESENT TEXT

"The present Convention shall apply to the persons referred to in Article 4 from the time they fall into the power of the enemy and until their final release and repatriation.

"Should any doubt arise as to whether persons, having committed a belligerent act and having fallen into the hands of the enemy, belong to any of the categories enumerated in Article 4, such persons shall enjoy the protection of the present Convention until such time as their status has been determined by a competent tribunal."

PREVIOUS TEXTS

None.

BACKGROUND

A representative of the Red Cross explained to the Delegates that there had been instances in the past where large numbers of prisoners had been captured and doubts had arisen as to the practicality of applying the Convention without delay. This article had been introduced in order to make the situation clear beyond all manner of doubt, although some delegates had considered that the exact time of the beginning and ending of the application of the Convention should not be explicitly stated, and others had wished to make it possible to change the status of prisoners of war at some time during their captivity. The protection afforded a prisoner of war must be given by the terms of this Article from the time he falls into the hands of the enemy whether the "enemy" be members of the military, the civilian police or ordinary civilians.

An amendment to permit a Detaining Power to evade the requirements of the Convention in cases which might be considered cases of "necessity" was voted down almost unanimously.

This section was intended to eliminate any question of exceptions such as existed under the 1929 Conventions under Article I which stated:

"The present Convention shall apply, without prejudice to the stipulations of Title VII:

"(1) . . . . .

"(2) To all persons belonging to the armed forces of belligerent parties captured by the enemy in the course of military operations at sea or in the air, except for such derogations as might be rendered inevitable by the conditions of capture. However, such derogations shall not infringe upon the fundamental principles of the present Convention; they shall cease from the moment when the persons captured have rejoined a prisoners-of-war camp."

The requirement of an adjudication of status by a "competent" tribunal was intended to preclude arbitrary determination, often by a junior in rank, that a captured person is not entitled to be treated as a prisoner of war. In the practice of the United States, the "competent tribunal" will probably take the form of a board of at least three officers. It is contemplated that instructions to this effect will be issued

to return to their homes leaving open the possibility that they might subsequently serve in the armed forces of the enemy. Only when the end of hostilities is imminent will a Detaining Power normally consider permitting enemy troops returning to their homes. In such cases, if enemy personnel, captured and present on their own soil, desire to go home, they may be permitted to do so. If the captured persons are a great distance from their homes, it would be incumbent upon the Detaining Power to furnish transportation.

ARTICLE 6, GWS  
ARTICLE 6, GWS Sea  
ARTICLE 6, GPW  
ARTICLE 7, GC

Substance

While Contracting Parties may conclude special agreements concerning the treatment of the victims of war, these agreements must not adversely affect the rights of such persons.

The special agreements will remain in force for the period the Conventions are applicable, except if:

- a. they terminate sooner by their terms, or
- b. more favorable measures have been taken.

Present Text

GWS: Art. 6

"In addition to the agreements expressly provided for in Articles 10, 15, 23, 28, 31, 36, 37 and 52, the High Contracting Parties may conclude other special agreements for all matters concerning which they may deem it suitable to make separate provision. No special agreement shall adversely affect the situation of the wounded and sick, of members of the medical personnel or of chaplains, as defined by the present Convention, nor restrict the rights which it confers upon them.

"Wounded and sick, as well as medical personnel and chaplains, shall continue to have the benefit of such agreements as long as the Convention is applicable to them, except where express provisions to the contrary are contained in the aforesaid or in subsequent agreements, or where more favourable measures have been taken with regard to them by one or other of the Parties to the conflict."

GWS Sea: Art. 6

"In addition to the agreements expressly provided for in Articles 10, 18, 31, 38, 39, 40, 43 and 53, the High Contracting Parties may conclude



other special agreements for all matters concerning which they may deem it suitable to make separate provision. No special agreement shall adversely affect the situation of wounded, sick and shipwrecked persons, of members of the medical personnel or of chaplains, as defined by the present Convention, nor restrict the rights which it confers upon them.

"Wounded, sick and shipwrecked persons, as well as medical personnel and chaplains, shall continue to have the benefit of such agreements as long as the Convention is applicable to them, except where express provisions to the contrary are contained in the aforesaid or in subsequent agreements, or where more favourable measures have been taken with regard to them by one or other of the Parties to the conflict."

GPW: Art. 6

"In addition to the agreements expressly provided for in Articles 10, 23, 28, 33, 60, 65, 66, 67, 72, 73, 75, 109, 110, 118, 119, 122, and 132, the High Contracting Parties may conclude other special agreements for all matters concerning which they may deem it suitable to make separate provision. No special agreement shall adversely affect the situation of prisoners of war, as defined by the present Convention, nor restrict the rights which it confers upon them

"Prisoners of war shall continue to have the benefit of such agreements as long as the Convention is applicable to them, except where express provisions to the contrary are contained in the aforesaid or in subsequent agreements, or where more favourable measures have been taken with regard to them by one or other of the Parties to the conflict."

GC: Art. 7

"In addition to the agreements expressly provided for in Articles 11, 14, 15, 17, 36, 108, 109, 132, 133 and 149, the High Contracting Parties may conclude other special agreements for all matters concerning which they may deem it suitable to make separate provision. No special agreement shall adversely affect the situation of protected persons, as defined by the present Convention, nor restrict the rights which it confers upon them.

"Protected persons shall continue to have the benefit of such agreements as long as the Convention is applicable to them, except where express provisions to the contrary are contained in the aforesaid or in subsequent agreements, or where more favourable measures have been taken with regard to them by one or other of the Parties to the conflict."

Previous texts

None

Background

Types of special agreements provided for by Conventions:

a. GWS

- Art. 10 (Protecting Powers)
- Art. 15 (Wounded on battlefield)
- Art. 23 (Hospital zones)
- Art. 28 (Relief of retained personnel)
- Art. 31 (Return of medical personnel to own forces)
- Art. 36 (Marking of medical aircraft)
- Art. 37 (Overflight and landing in neutral territory)
- Art. 52 (Enquiry into alleged violation of Convention)

b. GWS Sea

- Art. 10 (Protecting Powers)
- Art. 18 (Removal of wounded and sick)
- Art. 31 (Neutral observers on hospital ships)
- Art. 38 (Neutral observers on chartered medical transports)
- Art. 39 (Marking of medical aircraft)
- Art. 40 (Overflight and landing in neutral territory)
- Art. 43 (Identification of hospital ships)
- Art. 53 (Enquiry into alleged violation of Convention)

c. GFW

- Art. 10 (Protecting Powers)
- Art. 23 (Marking of POW camps)
- Art. 28 (Canteen profits)
- Art. 33 (Relief of retained personnel)
- Art. 60 (Advances of pay)
- Art. 65 (Amount of accounts of POWs)
- Art. 66 (Credit balances of POW accounts on repatriation)
- Art. 67 (Advances of pay)
- Art. 72 (Relief shipments)
- Art. 73 (Relief shipments)
- Art. 75 (Transport of relief shipments)

- Art. 109 (Accommodation of seriously wounded and sick in neutral countries)
- Art. 110 (Persons to be repatriated)
- Art. 118 (Costs of transport on repatriation)
- Art. 119 (Forwarding of effects; search for missing prisoners)
- Art. 122 (Transmission of personal effects)
- Art. 132 (Enquiry into alleged violation of Convention)

d. GC

- Art. 11 (Protecting Powers)
- Art. 14 (Hospital zones)
- Art. 15 (Neutralized zones)
- Art. 17 (Removal of wounded and sick from besieged areas)
- Art. 36 (Repatriation)
- Art. 108 (Relief shipments)
- Art. 109 (Relief shipments)
- Art. 132 (Accommodation of seriously wounded and sick in neutral countries)
- Art. 133 (Search for missing)
- Art. 149 (Enquiry into alleged violation of Convention)

Possible Questions

- Q. How are such agreements concluded?
- A. Either by direct negotiation between the belligerents or through the good offices of a neutral third state.

Analyzed in separate paper.



ARTICLE 7, GWS  
 ARTICLE 7, GWS Sea  
 ARTICLE 7, GPW  
 ARTICLE 8, GC

SUBSTANCE

Persons protected by the Conventions may in no circumstances renounce in part or in entirety the rights secured to them by the Conventions, and by special agreements, if any, referred to in the foregoing Article (6/6/6/7).

PRESENT TEXTS

GWS: Art. 7

"Wounded and sick, as well as members of the medical personnel and chaplains, may in no circumstances renounce in part or in entirety the rights secured to them by the present Convention, and by the special agreements referred to in the foregoing Article, if such there be."

GWS Sea: Art. 7

"Wounded, sick and shipwrecked persons, as well as members of the medical personnel and chaplains, may in no circumstances renounce in part or in entirety the rights secured to them by the present Convention, and by the special agreements referred to in the foregoing Article, if such there be."

GPW: Art. 7

"Prisoners of war may in no circumstances renounce in part or in entirety the rights secured to them by the present Convention, and by the special agreements referred to in the foregoing Article, if such there be."

GC: Art. 8

"Protected persons may in no circumstances renounce in part or in entirety the rights secured to them by the present Convention, and by the special agreements referred to in the foregoing Article, if such there be."

BACKGROUND

Article 7 reflects the concern of the drafters that the obligations of the Conventions should not be evaded under the guise of individual renunciation of rights.

The application of Article 7 was called into question by the Soviet Bloc at the General Assembly's debate in 1952 on release and repatriation of prisoners of war in Korea. The Soviet Union sought to establish that a

prisoner of war seeking asylum and rejecting repatriation would be renounced a right to be repatriated under Article 118 of the Prisoners of War Convention. The prevailing view, however, was that the prisoner had the right under Article 118 to an unrestricted opportunity of repatriation which was consistent with his claiming and receiving asylum, and that Article 7 was not intended to mean that a prisoner of war should be compelled by force to exercise such rights if he genuinely did not wish to do so. (See Art. 118 GPW for fuller discussion of the issue of release and repatriation.)

ARTICLE 8, GWS

ARTICLE 8, GWS Sea

ARTICLE 8, GPW

ARTICLE 9, GC

Substance

The interests of the belligerents are to be protected by Protecting Powers -- neutral states designated for this purpose by the nations whose interests are safeguarded. The individuals whom they specifically designate to perform these functions are subject to approval by the state with which they carry out their duties. Their work is to be facilitated. Their activities on behalf of the wounded, sick, and shipwrecked may be restricted temporarily when such action is demanded by "imperative military necessities." (Last sentence applies only to GWS and GWS Sea)

Present Text

GWS: Art. 8

"The present Convention shall be applied with the cooperation and under the scrutiny of the Protecting Powers whose duty it is to safeguard the interests of the Parties to the conflict. For this purpose, the Protecting Powers may appoint, apart from their diplomatic or consular staff, delegates from amongst their own nationals or the nationals of other neutral Powers. The said delegates shall be subject to the approval of the Power with which they are to carry out their duties.

"The Parties to the conflict shall facilitate to the greatest extent possible, the task of the representatives or delegates of the Protecting Powers.

"The representatives or delegates of the Protecting Powers shall not in any case exceed their mission under the present Convention. They shall, in particular, take account of the imperative necessities of security of the State wherein they carry out their duties. Their activities shall only be restricted as an exceptional and temporary measure when this is rendered necessary by imperative military necessities."

Article 8 GWS Sea, 8GPW and 9GC are identical, except the last sentence of the third paragraph does not appear in latter two.

Previous Texts

GWS, GWS Sea, and GC: None



GPW: Art. 86, paras. 1-3, GPW 1929:

"The High Contracting Parties recognize that the regular application of the present Convention will find a guaranty in the possibility of collaboration of the Protecting Powers charged with safeguarding the interests of belligerents; in this respect, the Protecting Powers may, besides their diplomatic personnel, appoint delegates from among their own nationals or from among the nationals of other neutral Powers. These delegates must be subject to the approval of the belligerent near which they exercise their mission.

"Representatives of the Protecting Power or its accepted delegates shall be permitted to go to any place, without exception, where prisoners of war are interned. They shall have access to all places occupied by prisoners and may interview them, as a general rule without witnesses, personally or through interpreters.

"Belligerents shall so far as possible facilitate the task of representatives or accepted delegates of the protecting Power. The military authorities shall be informed of their visit."

#### Background

This article represents an importation into GWS and GWS Sea of the principles of paragraphs 1-3 of Article 86 of GPW 1929, upon which it is based. GWS 1929 and Convention No. X of The Hague of 1907 had contained no stipulations regarding the activities of protecting Powers.

The sentence "Their activities (i.e., those of the representatives or delegates of the Protecting Power) shall only be restricted as an exceptional and temporary measure when rendered necessary by imperative military necessities" appears in GWS and GWS Sea but not in GPW and GC. The disparity in wording is an intentional one. The following reasons were adduced at the Geneva Conference for the inconsistency in wording:

(1) This limitation on the activities of Protecting Powers had not previously appeared in any convention relating to prisoners of war and civilians. To import it at this juncture would be a step backward.

(2) This general restriction on the work of the Protecting Power was not necessary in the case of GPW and GC since those Conventions mentioned in individual articles the specific limits within which Protecting Powers were expected to act.

(3) The institutions of Protecting Powers goes to the very essence of the protection of prisoners of war and civilians, as is not the case in respect of the wounded, sick, and shipwrecked.

(4) It is reasonable to restrict the activities of the Protecting Power in GWS and GWS Sea, since these Conventions deal fundamentally with sea or land combat wherein the Protecting Power cannot be given complete freedom of action (2B Final Record, Dipl. Conf. of Geneva 346).



Possible Questions

1. Q. What briefly is the purpose of the Protecting Power?
  - A. To permit communication between belligerents through the medium of a neutral third state; to provide a system of inspection in connection with victims of the war who are under the control of the enemy; and to permit a neutral to exercise its good offices to ensure compliance with the Conventions.
2. Q. Can a Protecting Power tell a state how it must treat prisoners of war and internees?
  - A. No. It has no power to direct. Its function is to "cooperate," "scrutinize," and "safeguard."
3. Q. Who might be Protecting Powers on behalf of the United States in a future war?
  - A. Historically Switzerland and Sweden have often fulfilled this role. Conceivably India might be considered acceptable by both the Free World and the Iron Curtain countries in a possible future conflict.
4. Q. What action may the United States take if a Protecting Power for individuals held by the United States demonstrates that, while it professes to be neutral, it is not in fact fulfilling its duties in an impartial manner?
  - A. The United States could declare the diplomatic or consular personnel of the Protecting Power *personae non gratae* or could withdraw its approval from the delegates who had been appointed.

ARTICLE 9, GWS  
ARTICLE 9, GWS Sea  
ARTICLE 9, GFW  
ARTICLE 10, GC

Substance

The International Committee of the Red Cross and other impartial humanitarian organizations may, with the consent of the belligerents, undertake humanitarian activities on behalf of war victims.

Present Text

GWS: Art. 9

"The provisions of the present Convention constitute no obstacle to the humanitarian activities which the International Committee of the Red Cross or any other impartial humanitarian organization may, subject to the consent of the Parties to the conflict concerned, undertake for the protection of wounded and sick, medical personnel and chaplains, and for their relief."

GWS Sea: Art. 9

"The provisions of the present Convention constitute no obstacle to the humanitarian activities which the International Committee of the Red Cross or any other impartial humanitarian organization may, subject to the consent of the Parties to the conflict concerned, undertake for the protection of wounded, sick and shipwrecked persons, medical personnel and chaplains, and for their relief."

GFW: Art. 9

"The provisions of the present Convention constitute no obstacle to the humanitarian activities which the International Committee of the Red Cross or any other impartial humanitarian organization may, subject to the consent of the Parties to the conflict concerned, undertake for the protection of prisoners of war and for their relief."

GC: Art. 10

"The provisions of the present Convention constitute no obstacle to the humanitarian activities which the International Committee of the Red Cross

or any other impartial humanitarian organization may, subject to the consent of the Parties to the conflict concerned, undertake for the protection of of civilian persons and for their relief.

Previous Text

GWS, GWS Sea, GC: None.

GPW: Art. 88, GPW 1929 provides:

"The foregoing provisions are not an obstacle to the humanitarian activity which the International Committee of the Red Cross may use for the protection of prisoners of war, with the consent of the interested belligerents."

Background

This article imports into GWS, GWS Sea, and GC the substance of Article 88 of GPW 1929.

It was drafted in such a way as to include other humanitarian organizations as well as the International Committee of the Red Cross (2B Final Record, Dipl. Conf. of Geneva 21). These need not necessarily be international organizations (2B Final Record, Dipl. Conf. of Geneva 111).

Possible Questions

- Q. What humanitarian activities does the Red Cross carry on?
- A. Some of the activities the ICRC has engaged in are:
  - a. The operation of a Central Prisoners of War Information Bureau.
  - b. The furnishing of relief and medical supplies to prisoners of war and civilian internees.
  - c. The inspection of prisoner of war camps and camps for civilian internees.
  - d. Intervention with the belligerents to obtain compliance with conventions for the protection of war victims.
  - e. The undertaking of arrangements for the repatriation and accommodation in neutral countries of the seriously sick and wounded.



ARTICLE 10, GWS  
ARTICLE 10, GWS Sea  
ARTICLE 10, GPW  
ARTICLE 11, GC

Substance

The belligerents may agree to entrust the duties of a Protecting Power to an impartial organization.

If Protected persons for any reason cease to be protected by a Protecting Power, the Detaining Power must request a neutral state or an impartial organization to undertake its functions.

If such protection cannot be arranged, the Detaining Power must request or accept the offer of the services of a humanitarian organization, such as the International Red Cross, to assume the humanitarian functions of a Protecting Power.

Present Text

GWS: Art. 10

"The High Contracting Parties may at any time agree to entrust to an organization which offers all guarantees of impartiality and efficacy the duties incumbent on the Protecting Powers by virtue of the present Convention.

"When wounded and sick, or medical personnel and chaplains do not benefit or cease to benefit, no matter for what reason, by the activities of a Protecting Power or of an organization provided for in the first paragraph above, the Detaining Power shall request a neutral State, or such an organization, to undertake the functions performed under the present Convention by a Protecting Power designated by the Parties to a conflict.

"If protection cannot be arranged accordingly, the Detaining Power shall request or shall accept, subject to the provisions of this Article, the offer of the services of a humanitarian organization, such as the International Committee of the Red Cross, to assume the humanitarian functions performed by Protecting Powers under the present Convention.

"Any neutral Power, or any organization invited



by the Power concerned or offering itself for these purposes, shall be required to act with a sense of responsibility towards the Party to the conflict on which persons protected by the present Convention depend, and shall be required to furnish sufficient assurances that it is in a position to undertake the appropriate functions and to discharge them impartially.

"No derogation from the preceding provisions shall be made by special agreements between Powers one of which is restricted, even temporarily, in its freedom to negotiate with the other Power or its allies by reason of military events, more particularly where the whole, or substantial part, of the territory of the said Power is occupied.

"Whenever, in the present Convention, mention is made of a Protecting Power, such mention also applies to substitute organizations in the sense of the present Article."

Articles 10 GWS Sea, 10 GPW and 11GC are identical with the foregoing except that 11GC adds the following:

"The provisions of this Article shall extend and be adapted to cases of nationals of a neutral State who are in occupied territory or who find themselves in the territory of a belligerent State in which the State of which they are nationals has not normal diplomatic representation."

Previous Texts

None

Background

World War II: This new provision was introduced at the Conference of Government Experts in 1947. They were mindful of the fact that during World War II, for one reason or another, 70% of prisoners of war did not benefit from the activities of a Protecting Power (2B Final Record, Dipl. Conf. of Geneva 21). The fifth paragraph was designed to foreclose agreements like that between the German Reich and Vichy France regarding prisoners of war. (2B Final Record, Dipl. Conf. of Geneva 112).

b. French proposal on substitute for a Protecting Power: At the Geneva Conference the French delegation was particularly concerned about providing a Protecting Power for protected persons in the face of a lack of neutral states in wartime, and the unsuitability of the ICRC to perform diplomatic as well as humanitarian functions. It therefore proposed the creation of a High International Committee of 30 to undertake the diplomatic duties of a Protecting Power as occasion might demand (2B Final Record, Dipl. Conf. of Geneva 61, 131; text at 3 id. 30). While the Conference failed to adopt this proposal, it nevertheless passed the following resolution:

"Whereas circumstances may arise in the event of the outbreak of a future international conflict in which there will be no Protecting Power with whose cooperation and under whose scrutiny the Conventions for the Protection of Victims of War can be applied; and

"Whereas Article 10 of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949, Article 10 of the Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of August 12, 1949, Article 10 of the Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949, and Article 11 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War of August 12, 1949, provide that the High Contracting Parties may at any time agree to entrust to a body which offers all guarantees of impartiality and efficacy the duties incumbent on the Protecting Powers by virtue of the aforesaid Conventions.

"The Conference recommends that consideration be given as soon as possible to the advisability of setting up an international body, the functions of which shall be, in the absence of a Protecting Power, to fulfill the duties performed by Protecting Powers in regard to the application of the Conventions for the Protection of War Victims."

c. Russian attitude: The Russians were strongly opposed to the idea that a state could be forced to accept the protection of a Protecting Power on behalf of its nationals (2B Final Record, Dipl. Conf. of Geneva 29) and reserved on this article. See separate paper on Russian reservations.

Possible questions

- Q. How does this article work; what happens when a country can't find a state which is willing to act as Protecting Power for its people?
- A. The alternatives, in the order in which they would be invoked, would be:
1. The two belligerents would try to agree on an impartial organization to do the work of a Protecting Power.
  2. If protected persons are, for any reason, not receiving the protection offered by a Protecting Power, the Detaining Power must request a neutral state or an impartial organization to serve as Protecting Power.
  3. If Alternative 2 does not work, the Detaining Power must then request or accept the offer of the services of a humanitarian organization like the International Red Cross to perform the humanitarian functions of a Protecting Power.
- Q. What is "an organization which offers all guarantees of impartiality and efficacy" referred to in the first paragraph and is it the same as the "humanitarian organization" referred to in the third paragraph?
- A. No "impartial organization" in the sense of this article now exists and it would have to be specially constituted, as recommended in Resolution 2 of the Conference (see text above). It would differ from a humanitarian organization, such as the ICRC, in that it would perform duties which could roughly be described as "diplomatic" as well as "humanitarian". This would include defending the interests of the state whose nationals were protected.
- Q. Can a Detaining Power refuse to accept the services of a humanitarian organization?
- A. No. (2B Final Record, Dipl. Conf. of Geneva 111).
- Q. What protection have the belligerents -- both the state whose nationals the protected persons are and the opposing belligerent -- against a biased or partial or unreliable Protecting Power or substitute organization?

- A. Each Party can demand assurances that the Protecting Power or substitute organization "is in a position to undertake the appropriate functions and to discharge them impartially" (2B Final Record, Dipl. Conf. of Geneva 111). Either party could turn down a Protecting Power or substitute organization which could not furnish acceptable guarantees of this nature.



ARTICLE 11, GWS  
ARTICLE 11, GWS Sea  
ARTICLE 11, GFW  
ARTICLE 12, GC

Substance

Protecting Powers are to lend their good offices to settle disagreements between the parties. They may propose meetings of representatives of the parties to attempt to resolve differences.

Present Text

GWS:

Art. 11

"In cases where they deem it advisable in the interest of protected persons, particularly in cases of disagreement between the Parties to the conflict as to the application or interpretation of the provisions of the present Convention, the Protecting Powers shall lend their good offices with a view to settling the disagreement.

"For this purpose, each of the Protecting Powers may, either at the invitation of one Party or on its own initiative, propose to the Parties to the conflict a meeting of their representatives, in particular of the authorities responsible for the wounded and sick, members of medical personnel and chaplains, possibly on neutral territory suitably chosen. The Parties to the conflict shall be bound to give effect to the proposals made to them for this purpose. The Protecting Powers may, if necessary, propose for approval by the Parties to the conflict, a person belonging to a neutral Power or delegated by the International Committee of the Red Cross, who shall be invited to take part in such a meeting."

GWS SEA:

Art. 11

"In cases where they deem it advisable in the interest of protected persons, particularly in cases of disagreement between the Parties to the conflict as to the application or interpretation of the provisions of the present Convention, the Protecting Powers shall lend their good offices with a view to settling the disagreement.



"For this purpose, each of the Protecting Powers may, either at the invitation of one Party or on its own initiative, propose to the Parties to the conflict a meeting of their representatives, in particular of the authorities responsible for the wounded, sick and shipwrecked, medical personnel and chaplains, possibly on neutral territory suitably chosen. The Parties to the conflict shall be bound to give effect to the proposals made to them for this purpose. The Protecting Powers may, if necessary, propose for approval by the Parties to the conflict, a person belonging to a neutral Power or delegated by the International Committee of the Red Cross, who shall be invited to take part in such a meeting."

GPW:

Art. 11

"In cases where they deem it advisable in the interest of protected persons particularly in cases of disagreement between the Parties to the conflict as to the application or interpretation of the provisions of the present Convention, the Protecting Powers shall lend their good offices with a view to settling the disagreement.

"For this purpose, each of the Protecting Powers may, either at the invitation of one Party or on its own initiative, propose to the Parties to the conflict a meeting of their representatives, and in particular of the authorities responsible for prisoners of war, possibly on neutral territory suitably chosen. The Parties to the conflict shall be bound to give effect to the proposals made to them for this purpose. The Protecting Powers may, if necessary, propose for approval by the Parties to the conflict a person belonging to a neutral Power, or delegated by the International Committee of the Red Cross, who shall be invited to take part in such a meeting."

GC:

Art. 12

"In cases where they deem it advisable in the interest of protected persons, particularly in cases of disagreement between the Parties to the conflict as to the application or interpretation of the provisions of the present Convention, the Protecting Powers shall lend their good offices with a view to settling the disagreement.

"For this purpose, each of the Protecting Powers may, either at the invitation of one Party or on its own initiative, propose to the Parties to the conflict a meeting of their representatives, and in particular of the authorities responsible for protected persons, possibly on neutral territory suitably chosen. The Parties to the conflict shall be bound to give effect to the proposals made to them for this purpose. The Protecting Powers may, if necessary, propose for approval by the Parties to the conflict, a person belonging to a neutral Power or delegated by the International Committee of the Red Cross, who shall be invited to take part in such a meeting."

Previous Texts

- a. GWS: None
- b. GWS SEA: None
- c. GPW: Art. 83, para. 3, GPW 1929:

"In order to assure the reciprocal application of the stipulations of the present Convention, and to facilitate the conclusion of the special conventions provided for above, belligerents may, upon the commencement of hostilities, authorize meetings of representatives of the respective authorities charged with the administration of prisoners of war."

Art. 87, GPW 1929:

"In case of disagreement between the belligerents as to the application of provisions of the present Convention, the protecting Powers must, in so far as possible, lend their good offices for the purpose of settling the difference."

"For this purpose, each of the protecting Powers may, in particular suggest to the interested belligerents a meeting of representatives thereof, possibly upon a neutral territory suitably chosen. Belligerents shall be bound to accede to proposals in this sense which are made to them. The protecting Power may, if occasion arises, submit for the approval of the Powers concerned a person belonging to a neutral Power or a person delegated by the International Committee of the Red Cross, who shall be summoned to take part in this meeting."

Background

This provision carries over into the other conventions stipulations which had been contained in Article 83, paragraph 3, and Article 87 of GFW 1929.

It was originally proposed that this article contain a provision regarding the submission of disputes to the International Court of Justice, but this matter was dealt with instead in Resolution 1 of the Conference (2B Final Record, Dipl. Conf. of Geneva 369-370). The Resolution provides:

"The Conference recommends that, in the case of a dispute relating to the interpretation or application of the present Conventions which cannot be settled by other means, the High Contracting Parties concerned endeavour to agree between themselves to refer such dispute to the International Court of Justice."

Sample Questions

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Q. Does the protecting Power have the right to interpret the Conventions?

A. No (2B Final Record, Dipl. Conf. of Geneva 131).

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## ARTICLE 12

### SUBSTANCE

Fixes responsibility for treatment of prisoners of war upon the Detaining Power.

Limits and defines conditions for transfer of prisoners of war to another power.

### PRESENT TEXT

"Prisoners of war are in the hands of the enemy Power, but not of the individuals or military units who have captured them. Irrespective of the individual responsibilities that may exist, the Detaining Power is responsible for the treatment given them.

"Prisoners of war may only be transferred by the Detaining Power to a Power which is a party to the Convention and after the Detaining Power has satisfied itself of the willingness and ability of such transferee Power to apply the Convention. When prisoners of war are transferred under such circumstances, responsibility for the application of the Convention rests on the Power accepting them while they are in its custody.

"Nevertheless, if that Power fails to carry out the provisions of the Convention in any important respect, the Power by whom the prisoners of war were transferred shall, upon being notified by the Protecting Power, take effective measures to correct the situation or shall request the return of the prisoners of war. Such requests must be complied with."

### PREVIOUS TEXTS

Article 12 replaces part of Article 2 of the 1929 Convention, and complements similar language in Article IV of the Hague Regulations:

Prisoners of war are in the power of the hostile Power [Government (Hague)] but not of the individuals or corps who have captured [capture (Hague)] them.

### BACKGROUND

#### 1. Substantive Changes

The last two paragraphs governing the transfers of prisoners are new provisions.

#### 2. Drafting History

The first paragraph embodies a principle which dates back to the Hague Regulations, as above quoted. Consistently with the



principle that the Detaining Power may not shift responsibility for infractions to its agents, the 1949 Conference inserted in Article 39 and 56 the words "under the direction of his government" in the provision giving Camp Commandments responsibility for publicizing and applying the Convention. The Delegations which opposed this insertion thought these words could be interpreted as restricting the individual responsibility so clearly stated in Article 12 as well as in Articles 121 and 129. As finally written, the Detaining Power remains responsible for the treatment of prisoners irrespective of the parallel responsibility of its individual agents.

The last two paragraphs of Article 12 are completely new and regulate responsibility in the case of transfer of prisoners from one Party to another; transfer to a Power which is not a party to the Convention is ruled out completely. The Stockholm Draft contained the principle of joint responsibility of the Power transferring and the Power receiving prisoners. Some Delegations at the Diplomatic Conference of 1949, including those of the United States and the United Kingdom, thought this principle involved delicate problems in application, and might give rise to contention between allies. In their opinion, joint responsibility did not give a satisfactory guarantee to prisoners, since the sharing might lead to a weakening or even the total disappearance of responsibility. Other Delegations, including that of the U.S.S.R., were much in favor of the principle of joint responsibility which they believed would prove a fundamental guarantee to prisoners of war. A majority finally decided upon a text which, without adopting the principle in so many words nevertheless took into account some of the objections to the system of single responsibility, and provided that the transferring Power shall bear a contingent responsibility to the extent that the transferring Power must correct any abuses by the transferee power or request the return of the prisoners.

It should be noted that the Soviet bloc and Yugoslavia made comparable reservations to this article at the time of signing. The Russian reservation is as follows:

"Article 12: 'The Union of Soviet Socialist Republics does not consider as valid the freeing of a Detaining Power, which has transferred prisoners of war to another Power, from responsibility for the application of the Convention to such prisoners of war while the latter are in the custody of the Power accepting them.'"

[The Hungarian reservation differed in that responsibility for the application of the Convention would be considered as resting in both powers.]

or  
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POSSIBLE QUESTIONS

1. Q - What is the effect of the Soviet reservation?

A - The Soviet reservation to Article 12 would seem to have little practical importance. In the case of prisoners of war held by the Soviet Government, there can be no objection to its considering itself jointly responsible with the transferee power in case they are transferred. With respect to prisoners of war held by the United States or transferred by the United States, a continuing interest in the welfare of the prisoners may be anticipated so that continued responsibility will not be an additional burden.

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## ARTICLE 13

EXISTANCE

Requires that prisoners of war be humanely treated at all times and particularly forbids mutilation and medical experimentation. Forbids reprisal. Requires protection against insults and public curiosity.

PRESENT TEXT

"Prisoners of war must at all times be humanely treated. Any unlawful act or omission by the Detaining Power causing death or seriously endangering the health of a prisoner of war in its custody is prohibited, and will be regarded as a serious breach of the present Convention. In particular, no prisoner of war may be subjected to physical mutilation or to medical or scientific experiments of any kind which are not justified by the medical, dental or hospital treatment of the prisoner concerned and carried out in his interest.

"Likewise, prisoners of war must at all times be protected, particularly against acts of violence or intimidation and against insults and public curiosity.

"Measures of reprisal against prisoners of war are prohibited."

PREVIOUS TEXTSArticle 2 GPW 1929

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They must at all times be humanely treated and protected, particularly against acts of violence, insults and public curiosity.

Measures of reprisal against them are prohibited.

Article 4, Hague Regulations

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They must be humanely treated.

BACKGROUND

## 1. Substantive Changes

Prisoners of war may not be subjected to medical or scientific experimentation. Unlawful acts causing death or endangering health are "serious" breaches. The term "serious breach" was used rather than "grave breach" because the delegates

did not want to introduce a consideration of a penal character which would have been, they felt, out of place in this context. The penal sanctions for forbidden conduct are covered in Article 130, GPW.

## 2. Past U. S. Practices

Army Technical Manual 19-500, Enemy Prisoners of War, 5 October 1944, contained in the following prohibition:

Experimental medical research will not be conducted on prisoner patients, even on a voluntary basis, page 2.23.

## 3. World War II Experiences

In January 1944, Field Marshal Kesselring, commander-in-chief of the German forces in Italy, ordered General Maelzer who was commander of the Rome garrison to hold a parade of several hundreds of British and American prisoners of war in the streets of the Italian capital. This parade was to be staged to bolster the morale of the Italian population in view of the recent allied landings. Maelzer ordered the parade which took place on 2 February 1944. 200 American prisoners of war were marched from the Coliseum, through the main streets of Rome under armed German guards. The streets were lined by forces under the control of Maelzer, who with his staff attended the parade. According to witnesses, the population threw stones and sticks at the prisoners. On these facts General Maelzer was charged and found guilty of exposing prisoners of war in his custody to acts of violence, insults and public curiosity. (11 War Crimes Reports 53)

During the Second World War the Nazi leaders had sanctioned the use of prisoners for medical and scientific experiments. As a result of these experiments involving testing of poisons, freezing of the human body, transplanting of bone structure, etc., numerous persons including tens of thousands of Poles were murdered. (See United States v. Brandt et al (1947), 1 Trials of War Criminals before the Nuerenberg Military Tribunals 1)

## 4. Drafting History

To prevent the recurrence of atrocities in the future, the first paragraph of this article was inserted which expressly prohibits the employment of prisoners of war for experimentation. The second and third paragraphs of the article are almost identical with the provisions which appeared in the 1929 Convention.



Reprisals are defined in paragraph 358, Rules of Land Warfare, as "acts of retaliation resorted to by one belligerent against the enemy individuals or property for illegal acts of warfare committed by the other belligerent, for the purpose of enforcing future compliance with the recognized rules of internationalized warfare." The provision with respect to reprisals is new and is a reiteration of earlier requirements.

Article 13 of the Convention spells out in greater detail the general requirements as to the level and type of treatment which must be accorded prisoners of war. Article 121 requires immediate report to the Protecting Power of an investigation by the Detaining Power into each case of death or serious injury charged or suspected to have been caused by any person. Persons guilty of such offenses must be prosecuted.



ARTICLE 11

SUBSTANCE

Requires that prisoners be treated with respect for their persons and their honor, giving due regard to the sex of female prisoners. Prisoners of war retain full civil capacity.

PRESENT TEXT

"Prisoners of war are entitled in all circumstances to respect for their persons and their honour.

"Women shall be treated with all the regard due to their sex and shall in all cases benefit by treatment as favourable as that granted to men.

"Prisoners of war shall retain the full civil capacity which they enjoyed at the time of their capture. The Detaining Power may not restrict the exercise, either within or without its own territory, of the rights such capacity confers except in so far as the captivity requires."

PREVIOUS TEXTS

Article 3 GPW 1929

Article 3

Prisoners of war have the right to have their person and their honor respected. Women shall be treated with all the regard due to their sex.

Prisoners retain their full civil status.

BACKGROUND

1. Substantive Changes

None.

2. Past U. S. Practices

The United States has consistently required honorable treatment of all prisoners of war in its custody.

With respect to the retention of full civil capacity, during World War II it was the practice of the United States that prisoners, including members of Italian Service Units, were not permitted to marry while they were in the custody of the United States. This did not preclude a prisoner from contracting marriage by proxy with a person residing in the country which the prisoner was serving at the time of capture. Page 2.29 TM 19-500.

### 3. Drafting History

This Article reaffirms the principles which were already laid down in the 1929 Convention. The second paragraph, dealing with women prisoners, has been slightly strengthened by the addition of the words "and shall in all cases benefit by treatment as favourable as that granted to men."

The object of the new paragraph indicating that the exercise of civil rights may be restricted by the requirements of captivity was to avoid giving prisoners the impression, which had been given by the 1929 Convention, that it was possible for them to exercise their full civil rights, by contracting marriages, for instance, in the territory of the Detaining Power. The new article was intended, however, to permit a prisoner to dispose of property at home or carry on business activities at home.

Since the status of women is not always equal to that of men in some countries, the wording of this Article was made explicit expressly to cover such a situation.

# ARTICLE 15

## REQUIREMENT

Requires that the Detaining Power provide for the free maintenance and medical care of the prisoners.

## PRESENT TEXT

"The Power detaining prisoners of war shall be bound to provide free of charge for their maintenance and for the medical attention required by their state of health."

## PREVIOUS TEXTS

### Article 4 GPW 1929

The Power detaining prisoners of war is bound to provide for their maintenance.

## BACKGROUND

### 1. Substantive Changes

- a. Specifies that medical care be free.
- b. The requirement that officers pay for their food and clothing (Art. 22, GPW 1929) has been dropped.

### 2. Past U. S. Practices

This Article requires no change in the traditional United States practice that maintenance and medical care be furnished free of charge.

Prisoners will be furnished medical, surgical, and dental treatment identical with that provided for United States troops. Page 2.22 TM 19-500.

### 3. Drafting History

This article reaffirms the traditional principle (formerly subject to an exception in the case of officers) that the Detaining Power must provide for the clothing, feeding and shelter of prisoners of war. The 1929 text has been strengthened by requiring that the maintenance and medical care shall be furnished free of charge.

Articles 25-31 deal specifically with the food, the clothing and the medical treatment that are to be afforded prisoners of war.

ARTICLE 16

PRESTANCE

Requires that all prisoners of war, with certain exceptions, shall be treated alike by the Detaining Power, without adverse distinction based on race, age, nationality, religious belief or political opinions, etc.

PRESENT TEXT

"Taking into consideration the provisions of the present Convention relating to rank and sex, and subject to any privileged treatment which may be accorded to them by reason of their state of health, age or professional qualifications, all prisoners of war shall be treated alike by the Detaining Power, without any adverse distinction based on race, nationality, religious belief or political opinions, or any other distinction founded on similar criteria."

PREVIOUS TEXTS

Article 4 GPW 1929

Difference in treatment among prisoners is lawful only when it is based on the military rank, state of physical or mental health, professional qualifications or sex of those who profit thereby.

BACKGROUND

1. Substantive Changes

Age has been added as an additional basis for preferential treatment, and possible bases for discrimination have been added.

QUESTION

Q. - If Communist prisoners of war in a camp were to become disorderly or were to set up a secret organization in the camp or were to attack prisoners who did not share their views, would this article prevent the Detaining Power from segregating such prisoners.

A. - No. The segregation of such prisoners would not be on the basis of political belief but would be undertaken in order to maintain order in the camps, an authority which the Detaining Power undoubtedly has. Belief not flowering into action cannot be the basis for difference in treatment; conduct can.



ARTICLE 17

ASSURANCE

Specifies what information a prisoner of war is required to give, prohibits coercion to exact any other information whatsoever.

PRESENT TEXT

"Every prisoner of war, when questioned on the subject, is bound to give only his surname, first name, and rank, date of birth, and army, regimental, personal or serial number, or failing this, equivalent information.

"If he wilfully infringes this rule, [i.e. by refusing to give the above information] he may render himself liable to a restriction of the privileges accorded to his rank or status.

"Each Party to a conflict is required to furnish the persons under its jurisdiction who are liable to become prisoners of war, with an identity card showing the owner's surname, first name, rank, army, regimental, personal or serial number or equivalent information, and date of birth. The identity card may, furthermore, bear the signature of the fingerprints, or both, of the owner, and may bear, as well, any other information the Party to the conflict may wish to add concerning persons belonging to its armed forces. As far as possible the card shall measure 6.5x10 cm. and shall be issued in duplicate. The identity card shall be shown by the prisoner of war upon demand, but may in no case be taken away from him.

"No physical or mental torture, nor any other form of coercion, may be inflicted on prisoners of war to secure from them information of any kind whatever. Prisoners of war who refuse to answer may not be threatened, insulted, or exposed to unpleasant or disadvantageous treatment of any kind.

"Prisoners of war who, owing to their physical or mental condition, are unable to state their identity, shall be handed over to the medical service. The identity of such prisoners shall be established by all possible means, subject to the provisions of the preceding paragraph.

"The questioning of prisoners of war shall be carried out in a language which they understand."

VARIOUS TEXTS

Article 5 GPW 1929:

"Every prisoner of war is bound to give, if he is questioned on the subject, his true name and rank, or else his regimental number.

"If he infringes this rule, he is liable to have the advantages given to prisoners of his class curtailed.

"No coercion may be used on prisoners to secure information relative to the condition of their army or country. Prisoners who refuse to answer may not be threatened, insulted, or exposed to unpleasant or disadvantageous treatment of any kind whatever.

"If, because of his physical or mental condition, a prisoner is unable to identify himself, he shall be turned over to the medical corps."

#### Article 9, Hague Regulations:

"Every prisoner of war is bound to give, if he is questioned on the subject, his true name and rank, and if he infringes this rule, he is liable to have the advantages given to prisoners of his class curtailed."

#### BACKGROUND

##### 1. Substantive Changes

Under the provisions of the 1929 Convention, prisoners might limit themselves to indicating their regimental number. Under the new provision they are bound to give their name and rank, date of birth, and regimental or serial number. In order to facilitate identification, provision was made for the issuance of identity cards.

##### 2. Past U. S. Practices

War Department regulations governing the treatment of prisoners of war during World War II required compliance with the text of the 1929 Convention in respect to permissible questioning of prisoners.

##### 3. Drafting History

In the discussion of this article, it was indicated that the identity card was not prepared primarily for the convenience of the Detaining Power, but rather to help its owner to establish his identity.

Art. 17

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QUESTIONS

1. Q - Can prisoners be questioned about military, personal or political matters?

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A - Yes. There is no prohibition against asking questions. However, no physical or mental torture, or any other form of coercion shall be inflicted to secure such information.

2. Q - Is "screening", such as took place in Korea with respect to North Korean and Chinese prisoners, in any way prohibited by Article 17?

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A - No. Statements made in these interviews were made voluntarily.

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ARTICLE 18

STANCE

Specifies that all personal items to include badges of rank, etc. and articles designed for protection (gas masks, helmets, etc.) are to be retained by prisoners of war. Identification documents must be furnished to prisoners without charge, and sums of money taken away must be properly receipted for.

PRESENT TEXT

"All effects and articles of personal use, except arms, horses, military equipment and military documents, shall remain in the possession of prisoners of war, likewise their metal helmets and gas masks and like articles issued for personal protection. Effects and articles used for their clothing or feeding shall likewise remain in their possession, even if such effects and articles belong to their regulation military equipment.

"At no time should prisoners of war be without identity documents. The Detaining Power shall supply such documents to prisoners of war who possess none.

"Badges of rank and nationality, decorations and articles having above all a personal or sentimental value may not be taken from prisoners of war.

"Sums of money carried by prisoners of war may not be taken away from them except by order of an officer, and after the amount and particulars of the owner have been recorded in a special register and an itemized receipt has been given, legibly inscribed with the name, rank and unit of the person issuing the said receipt. Sums in the currency of the Detaining Power, or which are changed into such currency at the prisoner's request, shall be placed to the credit of the prisoner's account as provided in Article 64.

"The Detaining Power may withdraw articles of value from prisoners of war only for reasons of security; when such articles are withdrawn, the procedure laid down for sums of money impounded shall apply.

"Such objects, likewise sums taken away in any currency other than that of the Detaining Power and the conversion of which has not been asked for by the owners, shall be kept in the custody of the Detaining Power and shall be returned in their initial shape to prisoners of war at the end of their captivity."



PREVIOUS TEXTS

Article 6 GPW 1929

"All effects and objects of personal use--except arms, horses, military equipment and military papers--shall remain in the possession of prisoners of war, as well as metal helmets and gas masks.

"Money in the possession of prisoners may not be taken away from them except by order of an officer and after the amount is determined. A receipt shall be given. Money thus taken away shall be entered to the account of each prisoner.

"Identification documents, insignia of rank, decorations and objects of value may not be taken from prisoners."

Article 4, Hague Regulations

" \* \* \* all their personal belongings, except arms, horses, and military papers, remain their property."

BACKGROUND

1. Substantive Changes

The Detaining Power is to supply identity documents to prisoners who have none.

2. Prior U.S. Practices

TM 19-500 required that the officer in direct custodial charge of prisoners safeguard the money, valuables, and personal effects on the person or in the immediate possession of each prisoner. This included property which prisoners were not permitted to retain while they are interned.

It was further provided that:

"The possession by prisoners of United States money is prohibited. Any prisoner in whose possession United States money is found at any time subsequent to his initial search upon capture shall be deemed to have violated this regulation.

"Any United States money found in the possession of a prisoner shall be deemed to have come into his possession illegally and in violation of this regulation, and will be confiscated and deposited in Misc. Receipts \* \* \* .



"Since enemy governments do not pay their soldiers in United States money or issue it to them, the presumption is justified, in the absence of satisfactory evidence to the contrary, that United States money found in the possession of a prisoner at the time of initial search upon capture was unlawfully taken from an American soldier, living or dead. When United States money is found upon a prisoner at such time, an informal investigation will be made by an officer of the legality of his possession of it. The prisoner will be asked how he obtained the money and to state any other relevant facts or circumstances. He will be permitted to offer documentary evidence and to call any available witnesses. The investigating officer may also consider any other relevant facts and call witnesses \* \* \*. If the investigating officer concludes that the statement of the prisoner and other evidence (if any) presented by him outweigh the prima facie presumption above mentioned, the officer will give the prisoner a receipt for the money and deposit it to his credit in his trust fund account. "

(Page 4.2 TM 19-500, Enemy Prisoners of War)

The above provision of TM 19-500 to the effect that mere possession of money of the United States raises a presumption that the money has illegally entered the possession of a prisoner when in the hands of the United States is in the process of being revised to conform more closely to the present provisions of Article 18, GPW.

### 3. Drafting History

This article increases the safeguards regarding articles of value and money impounded from prisoners of war. Objects and articles of personal use which are to remain in his possession are specified. Finally, there is a provision that the prisoner may never be left without identity documents.

Private property of prisoners was not liable to capture, and disputes were frequent as to what should be regarded as personal property and what was part of the soldier's military equipment. Private property such as cash and objects of value, and, moreover, be taken from prisoners. It therefore appeared necessary to specify in the third paragraph that articles having a personal or sentimental value should not be taken from prisoners of war. The final disposition of personal articles from prisoners is governed by the concluding sentence of the fourth paragraph.

ARTICLE 19

ANCE

Prisoners of war shall be evacuated as soon as possible to camps of combat zone danger. Only prisoners of war who would run greater risk by being evacuated may be temporarily kept back in a danger zone.

ENT TEXT

"Prisoners of war shall be evacuated, as soon as possible after their capture, to camps situated in an area far enough from the combat zone for them to be out of danger.

"Only those prisoners of war who, owing to wounds or sickness, would run greater risks by being evacuated than by remaining where they are, may be temporarily kept back in a danger zone.

"Prisoners of war shall not be unnecessarily exposed to danger while awaiting evacuation from a fighting zone."

VIOUS TEXTS

Article 7, GPW, 1929

"Prisoners of war shall be evacuated within the shortest possible period after their capture to depots located in a region far enough from the zone of combat for them to be out of danger.

"Only prisoners who, because of wounds or sickness, would run greater risks by being evacuated than by remaining where they are may be temporarily kept in a dangerous zone.

"Prisoners shall not be needlessly exposed to danger while awaiting their evacuation from the combat zone."

GROUND

The texts of the 1929 and 1949 provisions are identical except for drafting changes.

POSSIBLE QUESTIONS

1. Q - What is the usual procedure for evacuating prisoners of

A - In the past it has been the policy of the United States to use the communication zone as the area to which prisoners are first sent. In World War II some German POW's were evacuated to the United States. This imposes no tactical problem and does not require any change in the method formerly used for evacuation.

ARTICLE 20

ANCE

Evacuation of prisoners shall be conducted humanely.

PRESENT TEXTS

"The evacuation of prisoners of war shall always be effected humanely and in conditions similar to those for the forces of the Detaining Power in their changes of station.

"The Detaining Power shall supply prisoners of war who are being evacuated with sufficient food and potable water, and with the necessary clothing and medical attention. The Detaining Power shall take all suitable precautions to ensure their safety during evacuation, and shall establish as soon as possible a list of the prisoners of war who are evacuated.

"If prisoners of war must, during evacuation, pass through transit camps, their stay in such camps shall be as brief as possible."

PREVIOUS TEXTS

"Article 7, GPW 1929

" \* \* \* "

"Evacuation of prisoners on foot may normally be effected only by stages of 20 kilometers a day, unless the necessity of reaching water and food depots requires longer stages."

BACKGROUND

1. Substantive Changes

Prisoners of war are to be evacuated under conditions similar to those of the forces of the Detaining Power. Prisoners shall be supplied with food and clothing while being evacuated.

2. Drafting History

In view of the distressing experiences of the last war, it appeared necessary to provide more effective safeguards for the protection of prisoners of war during evacuation. The new wording of the first paragraph places prisoners of war, therefore, on the same footing while they were being evacuated, as the forces of the Detaining Power. The second paragraph provides evacuated prisoners of war with a minimum standard of nourishment, clothing and medical atten-

There are two types of transit camps: (1) the temporary



camps discussed in this article and (2) the permanent camps provided for in Article 24.

The text of this Article as originally proposed included the word "Removal", but in order to eliminate any possible confusion with the Articles covering transfers of prisoners, the word "evacuation" was substituted.



## ARTICLE 21

CHANGE

Prisoners of war may be interned. No prisoner shall be compelled to accept liberty on parole or promise.

NEW TEXT

"The Detaining Power may subject prisoners of war to internment. It may impose on them the obligation of not leaving, beyond certain limits, the camp where they are interned, or if the said camp is fenced in, of not going outside its perimeter. Subject to the provisions of the present Convention relative to penal and disciplinary sanctions, prisoners of war may not be held in close confinement except where necessary to safeguard their health and then only during the continuation of the circumstances which make such confinement necessary.

"Prisoners of war may be partially or wholly released on parole or promise, in so far as is allowed by the laws of the Power on which they depend. Such measures shall be taken particularly in cases where this may contribute to the improvement of their state of health. No prisoner of war shall be compelled to accept liberty on parole or promise.

"Upon the outbreak of hostilities, each Party to the conflict shall notify the adverse Party of the laws and regulations allowing or forbidding its own nationals to accept liberty on parole or promise. Prisoners of war who are paroled or who have given their promise in conformity with the laws and regulations so notified, are bound on their personal honour scrupulously to fulfil, both towards the Power on which they depend and towards the Power which has captured them, the engagements of their paroles or promises. In such cases, the Power on which they depend is bound neither to require nor to accept from them any service incompatible with the parole or promise given."

OLD TEXTS

## Article 9, GPW, 1929

"Prisoners of war may be interned in a town, fortress, or other place, and may be required not to go beyond certain fixed limits. They may also be interned in fenced camps; they shall not be confined or imprisoned except as a measure indispensable for safety or health, and only so long as circumstances exist which necessitate such a measure."

## Articles 10, 11, 12, Hague Convention

"10. Prisoners of war may be set at liberty on parole, if the laws of their country allow, and in such cases they are bound,

on their personal honour, scrupulously to fulfil, both towards their own Government and the Government by whom they were made prisoners, the engagement they have contracted.

"11. A prisoner of war cannot be compelled to accept his liberty on parole; similarly the hostile Government is not obliged to accede to the request of the prisoner to be set at liberty on parole.

"12. Prisoners of war liberated on parole and recaptured bearing arms against the Government to whom they had pledged their honour, or against the allies of that Government, forfeit their right to be treated as prisoners of war, and can be brought before the courts."

#### BOUND

#### 1. Substantive Changes

There has been a tightening of the requirements regarding the effect of the law of the prisoner's own state on his capacity to give parole.

#### 2. Past U.S. Practices

Internment, i.e., restrictions to fixed limits, as in a prisoner of war compound, has been the traditional and only practical method for the control of prisoners of war in the practice of the United States.

TM 19-500, Enemy Prisoners of War provided:

#### "Parole

- a. Prisoners will not be granted an absolute parole.
- b. Camp commanders are authorized within their discretion to accept the parole of German general officer prisoners and their aides for the purpose of taking walks outside the stockade limits under the following conditions:
  - (1) Each parole will be written and signed by the officer to be paroled.
  - (2) Each parole will be for a specified period of time to be prescribed by the camp commander.
  - (3) The consent thereto of the senior German officer will be indicated in writing.
  - (4) For their own protection paroled officers will at all times be accompanied by an unarmed American officer.
  - (5) Paroled officers will not be permitted to go more than 5 miles from the camp or to visit any town, city, or thickly populated civilian area. The camp commander will assure himself that the parolee understands those limits before leaving the camp."

### 3. Drafting History

The first paragraph of this Article contains provisions similar in their essentials to those of Article 9, first paragraph, of the 1929 Convention. It was unanimously adopted.

GENEAL QUESTIONS

I. Q - May United States prisoners of war in the hands of the enemy give their parole?

A - It should be reiterated that the extent to which United States prisoners of war can give their parole is entirely a matter of policy. Generally, a member of the United States may give his temporary parole that he will not attempt to escape if he is acting for his own welfare or that of fellow prisoners, but the parole must be limited to the period of time necessary. He may not give an unlimited parole.



ARTICLE 22

SUBSTANCE

Requires that prisoners of war be interned on land in healthy places and that they be grouped together by nationality, language and custom, but may not be unwillingly separated from the armed forces with which they were serving at time of capture.

PRESENT TEXT

"Prisoners of war may be interned only in premises located on land and affording every guarantee of hygiene and healthfulness. Except in particular cases which are justified by the interest of the prisoners themselves, they shall not be interned in penitentiaries.

"Prisoners of war interned in unhealthy areas, or where the climate is injurious for them, shall be removed as soon as possible to a more favourable climate.

"The Detaining Power shall assemble prisoners of war in camps or camp compounds according to their nationality, language and customs, provided that such prisoners shall not be separated from prisoners of war belonging to the armed forces with which they were serving at the time of their capture, except with their consent."

PREVIOUS TEXTS

Article 9, GPW, 1929

"Prisoners of war may be interned in a town, fortress, or other place, and bound not to go beyond certain fixed limits. They may also be interned in enclosed camps; they may not be confined or imprisoned except as an indispensable measure of safety or sanitation, and only while the circumstances which necessitate the measure continue to exist.

"Prisoners captured in unhealthy regions or where the climate is injurious for persons coming from temperate regions, shall be transported as soon as possible to a more favorable climate.

"Belligerents shall, so far as possible, avoid assembling in a single camp prisoners of different races or nationalities."

BACKGROUND

1. Substantive Changes

It is now provided that prisoners, even of a different nationality or language, shall not be separated from other prisoners with whom they were serving at the time of their capture, except with their consent. Specifies that internment must be on land.

POSSIBLE QUESTIONS

1. Q - Are there any circumstances under which prisoners of war of the same nationality, language or customs, or who had served together, can be separated without their consent?

A - Yes. Such segregation could be accomplished on either of two bases:

a. A prisoner might request that he be separated from prisoners of war belonging to the armed forces with which he was serving at the time of capture.

b. Segregation of prisoners may also be effected if this measure is necessary in order to maintain order in the camps, to impose punishment or for medical reasons. As noted in connection with Article 16, mere thought alone is not a sufficient basis for segregating prisoners, but when thought ripens into action, the necessary measures may be taken for securing order in the camp. Thus, for example, during the Korean hostilities, prisoners were separated on the basis of whether they were active communists or not.

## ARTICLE 23

SUBSTANCE

Requires that prisoners of war shall be protected from combat fire and bombing, and the camp shall be clearly marked with either "PW" or "PG".

PRESENT TEXT

"No prisoner of war may at any time be sent to, or detained in areas where he may be exposed to the fire of the combat zone, nor may his presence be used to render certain points or areas immune from military operations.

"Prisoners of war shall have shelters against air bombardment and other hazards of war, to the same extent as the local civilian population. With the exception of those engaged in the protection of their quarters against the aforesaid hazards, they may enter such shelters as soon as possible after the giving of the alarm. Any other protective measure taken in favour of the population shall also apply to them.

"Detaining Powers shall give the Powers concerned, through the intermediary of the Protecting Powers, all useful information regarding the geographical location of prisoner of war camps.

"Whenever military considerations permit, prisoner of war camps shall be indicated in the day-time by the letters PW or PG, placed so as to be clearly visible from the air. The Powers concerned may, however, agree upon any other system of marking. Only prisoner of war camps shall be marked as such."

PREVIOUS TEXTS

## Article 9 GPW 1929

"No prisoner may, at any time, be sent into a region where he might be exposed to the fire of the combat zone, nor used to give protection from bombardment to certain points or certain regions by his presence."

BACKGROUND

## 1. Substantive Changes

Guarantees for the security of prisoners of war have been given considerably greater force. Provision has been made for distinctive markings of prisoner of war camps.

## 2. Drafting History

The insertion of the words "Whenever military considerations permit" at the beginning of the fourth paragraph as proposed by the United Kingdom was adopted in order that in small countries, markings whose location was already known to an enemy could not be used by the enemy as landmarks for aerial navigation.



POSSIBLE QUESTIONS

1. Q - If installations other than POW camps are marked with PW or PG, can they still be bombed?

A - This section clearly provides that no other place shall be marked with these signs. If a belligerent should clearly and unmistakably violate this prohibition, any installation so marked might still be a proper target.

2. Q - Would this article require that we build air raid shelters for prisoners of war?

A - Only to the same extent as the local civilian population have such protection.

3. Q - Is any problem of domestic law raised by the requirement for marking prisoner of war camps?

A - A certain problem is raised. In the absence of a statute a criminal indictment will not lie for a violation of a treaty of the United States. An Amendment to 18 U.S.C. 706 prohibiting the unauthorized use of these letter marking may be desirable.

ARTICLE 24

SUBSTANCE

Requires that transit or screening camps of a permanent nature conform to standards of base prisoner of war camps.

PRESENT TEXT

"Transit or screening camps of a permanent kind shall be fitted out under conditions similar to those described in the present Section, and the prisoners therein shall have the same treatment as in other camps."

PREVIOUS TEXTS

None.

BACKGROUND

This Article was introduced in order that prisoners of war in permanent transit camps might not be deprived of the guarantees accorded by the Conventions to prisoners in other camps, and to ensure that the Protecting Power might not be prevented from having permanent transit camps visited.

POSSIBLE QUESTIONS

Any questions would probably arise under the other Articles in this Section (Internment of Prisoners of War).

## ARTICLE 25

SUBSTANCE

Requires that quarters furnished be comparable to billets of Detaining Power in the same area, making allowance for habits and customs of the prisoners, and that separate quarters be furnished for women.

PRESENT TEXT

"Prisoners of war shall be quartered under conditions as favourable as those for the forces of the Detaining Power who are billeted in the same area. The said conditions shall make allowance for the habits and customs of the prisoners and shall in no case be prejudicial to their health.

"The foregoing provisions shall apply in particular to the dormitories of prisoners of war as regards both total surface and minimum cubic space, and the general installations, bedding and blankets.

"The premises provided for the use of prisoners of war individually or collectively, shall be entirely protected from dampness and adequately heated and lighted, in particular between dusk and lights out. All precautions must be taken against the danger of fire.

"In any camps in which women prisoners of war, as well as men, are accommodated, separate dormitories shall be provided for them."

PREVIOUS TEXTS

## Article 10, GPW, 1929

"Prisoners of war shall be lodged in buildings or in barracks affording all possible guarantees of hygiene and healthfulness.

"The quarters must be fully protected from dampness, sufficiently heated and lighted. All precautions must be taken against danger of fire.

"With regard to dormitories--the total surface, minimum cubic amount of air, arrangement and material of bedding--the conditions shall be the same as for the troops at base camps of the Detaining Power."

BACKGROUND

## 1. Substantive Changes

The provision relating to women prisoners is new.



## 2. Past U.S. Practices

"In theaters of operations, prisoners will be sheltered in appropriate existing facilities when possible. When it is necessary to provide facilities, they will be of temporary construction. In the zone of interior, the type of construction of prisoner-of-war camps will be equivalent to that provided for United States troops." (TM 19-500)

## 3. Drafting History

The Committee considered an amendment proposed by the New Zealand Delegation which aimed at the establishment of independent standards for prisoners' quarters, but did not consider the proposal practicable.

## ARTICLE 26

SUBSTANCE

Requires that the basic daily food rations shall be sufficient for good health, and that account be taken of the habitual diet of the prisoners.

PRESENT TEXT

"The basic daily food rations shall be sufficient in quantity, quality and variety to keep prisoners of war in good health and to prevent loss of weight or the development of nutritional deficiencies. Account shall also be taken of the habitual diet of the prisoners.

"The Detaining Power shall supply prisoners of war who work with such additional rations as are necessary for the labour on which they are employed.

"Sufficient drinking water shall be supplied to prisoners of war. The use of tobacco shall be permitted.

"Prisoners of war shall, as far as possible, be associated with the preparation of their meals; they may be employed for that purpose in the kitchens. Furthermore, they shall be given the means of preparing, themselves, the additional food in their possession.

"Adequate premises shall be provided for messing.

"Collective disciplinary measures affecting food are prohibited."

PREVIOUS TEXTS

## Article 11 GPW 1929

"The food ration of prisoners of war shall be equal in quantity and quality to that of troops at base camps.

"Furthermore, prisoners shall receive facilities for preparing themselves additional food which they might have.

"A sufficiency of potable water shall be furnished them. The use of tobacco shall be permitted. Prisoners may be employed in the kitchens.

"All collective disciplinary measures affecting the food are prohibited."

BACKGROUND

## 1. Substantive Changes

This section abandons the standards of the 1929 Convention

where food rations of prisoners of war were put on the same basis as for troops of the Detaining Power's own forces. The new provision is that the basic daily food rations shall be sufficient in quantity, quality and variety to keep prisoners of war in good health and to prevent loss of weight or the development of nutritional deficiencies. Account must also be taken of the habitual diet of the prisoners.

## 2. Past U. S. Practices

The Rules of Land Warfare (FM 27-10, 1940) followed almost exactly the requirements of Art. 11, GPW, 1929. Where possible and practical United States practice has been to take account of habitual diet, but the United States standards of diet have ordinarily been so superior that few problems have arisen.

## 3. Drafting History

This article was strongly advocated by the U. S. in view of the suffering and deaths of its personnel, held as prisoners of war in Asiatic countries during World War II, on account of their inability to subsist healthily on the native diet which was the standard at that time.

POSSIBLE QUESTIONS

1. Q - Does this mean that we would have to feed Chinese prisoners only rice?

A - Not necessarily. If rice were readily available in the particular area it would be within the spirit of this Article to provide this in their diet. However, if not readily available, the U.S. commander would not violate this Article if he gave the prisoners a diet comparable to that of our troops provided it maintained a level of good health. The requirement of this Article is not absolute except to the extent that the basic food ration must be sufficient to maintain good health.



## ARTICLE 27

SUBSTANCE

Requires Detaining Power to supply necessary clothing to prisoners of war.

PRESENT TEXT

"Clothing, underwear and footwear shall be supplied to prisoners of war in sufficient quantities by the Detaining Power, which shall make allowance for the climate of the region where the prisoners are detained. Uniforms of enemy armed forces captured by the Detaining Power should, if suitable for the climate be made available to clothe prisoners of war.

"The regular replacement and repair of the above articles shall be assured by the Detaining Power. In addition, prisoners of war who work shall receive appropriate clothing, wherever the nature of the work demands."

PREVIOUS TEXTS

## Article 12, GFW, 1929

"Clothing, linen and footwear shall be furnished prisoners of war by the Detaining Power. Replacement and repairing of these effects must be assured regularly. In addition, laborers must receive work clothes wherever the nature of the work requires it."

BACKGROUND

## 1. Substantive Changes

A new provision has been added that uniforms of the enemy force captured by the Detaining Power shall be made available to prisoners if practicable. Officer prisoners are no longer required to pay for their clothing as was provided by Article 22, GFW, 1929.

## 2. Past U.S. Practices

The following provision was in effect during the last war:

"Except as circumstances warrant or climate requires, no clothing, except work clothing, will be issued as a replacement to a prisoner until the clothing in his possession at the time of his capture has become unfit for use." (P. 2.10, TM-19-500, 5 Oct 44)

### 3. Drafting History

The text proposed at the Stockholm Conference contained the following provision:

"The uniforms of enemy forces taken by the Detaining Power, shall as far as possible be used as clothing for prisoners of war belonging to the said forces."

The delegate of the International Committee of the Red Cross explained that this paragraph was a compromise text. Previous conferences had abandoned the idea of inserting a clause requiring the Detaining Power to manufacture uniforms of the country of origin of the prisoners in order to clothe the latter; on the other hand, the prisoners could not be expected to agree to wear the uniform of the Detaining Power.

The final text as adopted by the Convention was substantially the same as that proposed by the Stockholm Conference. The paragraph quoted above was replaced by a sentence added to the first paragraph.

## ARTICLE 28

SUBSTANCE

Canteens shall be installed in all camps and the profits shall be used for the benefit of the prisoners.

PRESENT TEXT

"Canteens shall be installed in all camps, where prisoners of war may procure foodstuffs, soap and tobacco and ordinary articles in daily use. The tariff shall never be in excess of local market prices.

"The profits made by camp canteens shall be used for the benefit of the prisoners; a special fund shall be created for this purpose. The prisoners' representative shall have the right to collaborate in the management of the canteen and of this fund.

"When a camp is closed down, the credit balance of the special fund shall be handed to an international welfare organization, to be employed for the benefit of prisoners of war of the same nationality as those who have contributed to the fund. In case of a general repatriation, such profits shall be kept by the Detaining Power, subject to any agreement to the contrary between the Powers concerned."

PREVIOUS TEXTS

Article 12, GPW, 1929

" \* \* \* "

"Canteens shall be installed in all camps where prisoners may obtain, at the local market price, food products and ordinary objects."

BACKGROUND

## 1. Past U.S. Practices

"Canteens will be established in each prisoner of war base camp, branch camp, and general hospital designated exclusively for prisoners of war. The canteen at the branch camp will operate as a branch of the canteen at the prisoner-of-war camp to which the branch is attached." (page 2.29, TM 19-500)

"Coupon books will be issued through pay roll deductions and withdrawals from trust fund accounts in denominations of not less than \$1.00 \* \* \*."

"Coupons will be accepted by the canteen only when presented undetached from the book by the prisoner to whom issued, except that the chaplain or other authorized person may make purchases with detached coupons for prisoners sick in the hospital." (page 4.6, TM 19-500)

## 2. Substantive Changes

Introduces stipulations regarding the utilization of profits made by canteens for the prisoners' benefit. Profits from a camp canteen which has been closed down will be turned over to an international welfare organization for the benefit of prisoners of the same nationality as those who contributed to the fund.

## 3. Drafting History

It has been noticed during the last war that profits from camp canteens were very high, and therefore it was important to include a clause giving prisoners' representative the right to inspect canteen accounts and laying down that the profits were to be used for the benefit of the prisoners.

The phrase "right to collaborate" was used to describe the function of the prisoner representative in respect to the management of the canteen in order that he not be given too many tasks.



## ARTICLE 29

32

SUBSTANCE

Provides that sanitary measures be followed.

PRESENT TEXT

"The Detaining Power shall be bound to take all sanitary measures necessary to ensure the cleanliness and healthfulness of camps and to prevent epidemics.

"Prisoners of war shall have for their use, day and night, conveniences which conform to the rules of hygiene and are maintained in a constant state of cleanliness. In any camps in which women prisoners of war are accommodated, separate conveniences shall be provided for them.

"Also, apart from the baths and showers with which the camps shall be furnished, prisoners of war shall be provided with sufficient water and soap for their personal toilet and for washing their personal laundry; the necessary installations, facilities and time shall be granted them for that purpose."

PREVIOUS TEXTS

## Article 13 GPW 1929

"Prisoners of war shall have at their disposal, day and night, installations conforming to sanitary rules and constantly maintained in a state of cleanliness."

BACKGROUND

## 1. Substantive Changes

The provision regarding women prisoners of war is new.

## 2. Past U. S. Practices

"Prisoners will have at their disposal, day and night, toilet facilities conforming to sanitary rules of the United States Army." (page 2.23, TM 19-500)

## 3. Drafting History

This Article is very little different from the provisions of the 1929 Convention.

ARTICLES 30, 31 and 32

SUBSTANCE

Provides for medical treatment of prisoners.

PRESENT TEXT

Article 30

"Every camp shall have an adequate infirmary where prisoners of war may have the attention they require, as well as appropriate diet. Isolation wards shall, if necessary, be set aside for cases of contagious or mental disease.

"Prisoners of war suffering from serious disease, or whose condition necessitates special treatment, a surgical operation or hospital care, must be admitted to any military or civilian medical unit where such treatment can be given, even if their repatriation is contemplated in the near future. Special facilities shall be afforded for the care to be given to the disabled, in particular to the blind, and for their rehabilitation, pending repatriation.

"Prisoners of war shall have the attention, preferably, of medical personnel of the Power on which they depend and, if possible, of their nationality.

"Prisoners of war may not be prevented from presenting themselves to the medical authorities for examination. The detaining authorities shall, upon request, issue to every prisoner who has undergone treatment, an official certificate indicating the nature of his illness or injury, and the duration and kind of treatment received. A duplicate of this certificate shall be forwarded to the Central Prisoners of War Agency.

"The costs of treatment, including those of any apparatus necessary for the maintenance of prisoners of war in good health, particular dentures and other artificial appliances, and spectacles, shall be borne by the Detaining Power."

Article 31

"Medical inspections of prisoners of war shall be held at least once a month. They shall include the checking and the recording of the weight of each prisoner of war. Their purpose shall be, in particular, to supervise the general state of health, nutrition and cleanliness of prisoners and to detect contagious diseases, especially tuberculosis, malaria and venereal disease. For this purpose the most efficient methods available shall be employed, e.g. periodic mass miniature radiography for the early detection of tuberculosis.

Article 32

"Prisoners of war who, though not attached to the medical service of their armed forces, are physicians, surgeons, dentists,

nurses, or medical orderlies, may be required by the Detaining Power to exercise their medical functions in the interests of prisoners of war dependent on the same Power. In that case they shall continue to be prisoners of war, but shall receive the same treatment as corresponding medical personnel retained by the Detaining Power. They shall be exempted from any other work under Article 49."

#### PREVIOUS TEXTS

Article 30 replaces Article 14, GPW 1929.

"Every camp shall have an infirmary, where prisoners of war shall receive every kind of attention they need. If necessary, isolated quarters shall be reserved for the sick affected with contagious diseases.

"Expenses of treatment, including therein those of temporary prosthetic equipment, shall be borne by the Detaining Power.

"Upon request, belligerents shall be bound to deliver to every prisoner treated an official statement showing the nature and duration of his illness as well as the attention received.

"It shall be lawful for belligerents reciprocally to authorize, by means of private arrangements, the retention in the camps of physicians and attendants to care for prisoners of their own country.

"Prisoners affected with a serious illness or whose condition necessitates an important surgical operation, must be admitted, at the expense of the Detaining Power, to any military or civil medical unit qualified to treat them."

Article 31 replaces Article 15, GPW 1929.

"Medical inspection of prisoners of war shall be arranged at least once a month. Their purpose shall be the supervision of the general state of health and cleanliness, and the detection of contagious diseases, particularly tuberculosis and venereal diseases."

Article 32 is new.

#### BACKGROUND

##### 1. Substantive Changes

There is a new provision that prisoners shall have the attention, preferably, of medical personnel of their own Power. The provisions of Article 32 are also new.

## 2. Drafting History

There was some discussion as to the frequency with which radiographical examinations should be given. There was some objection that the smaller countries would not have the facilities available in wartime to give this as a phase of the examinations every month. The provision finally adopted was that periodic mass miniature radiograph examinations be given.



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## ARTICLE 33

SUBSTANCE

Medical personnel and chaplains shall not be considered as prisoners of war, but shall be allowed to administer to the other prisoners of war. They retain the benefits of GPW.

PRESENT TEXT

"Members of the medical personnel and chaplains while retained by the Detaining Power with a view to assisting prisoners of war, shall not be considered as prisoners of war. They shall, however, receive as a minimum the benefits and protection of the present Convention, and shall also be granted all facilities necessary to provide for the medical care of, and religious ministration to prisoners of war.

"They shall continue to exercise their medical and spiritual functions for the benefit of prisoners of war, preferably those belonging to the armed forces upon which they depend, within the scope of the military laws and regulations of the Detaining Power and under the control of its competent services, in accordance with their professional etiquette. They shall also benefit by the following facilities in the exercise of their medical or spiritual functions:

- "(a) They shall be authorized to visit periodically prisoners of war situated in working detachments or in hospitals outside the camp. For this purpose, the Detaining Power shall place at their disposal the necessary means of transport.
- "(b) The senior medical officer in each camp shall be responsible to the camp military authorities for everything connected with the activities of retained medical personnel. For this purpose, Parties to the conflict shall agree at the outbreak of hostilities on the subject of the corresponding ranks of the medical personnel, including that of societies mentioned in Article 26 of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949. This senior medical officer, as well as chaplains, shall have the right to deal with the competent authorities of the camp on all questions relating to their duties. Such authorities shall afford them all necessary facilities for correspondence relating to these questions.
- "(c) Although they shall be subject to the internal

discipline of the camp in which they are retained, such personnel may not be compelled to carry out any work other than that concerned with their medical or religious duties.

"During hostilities, the Parties to the conflict shall agree concerning the possible relief of retained personnel and shall settle the procedure to be followed.

"None of the preceding provisions shall relieve the Detaining Power of its obligations with regard to prisoners of war from the medical or spiritual point of view."

#### PREVIOUS TEXTS

None.

#### BACKGROUND

##### 1. Substantive Changes

There was no corresponding provision in the 1929 POW Convention. However, Article 9 of the 1929 Wounded and Sick Conventions provided that medical personnel and chaplains would not be treated as prisoners of war.

##### 2. Past U. S. Practices

Section 4 of Enemy Prisoners of War, TM 19-500, provides:

"The term 'protected personnel' as used in this refers to the personnel described in Articles 9, 10, and 11 of the Red Cross Convention and includes doctors, dentists, army nurses, medical administrative officers, pharmacists, sanitary personnel, enlisted medical personnel, chaplains and members of recognized voluntary aid societies who have been certified by United States military authority. Protected personnel will not be treated as prisoners of war. However, in the interest of national security and in order to utilize them in their own nationals, this personnel will be housed in prisoners of war camps until repatriated. During their protective custody, they will be accorded treatment no less favorable than prisoners of war of equivalent rank."

##### 3. Drafting History

This Article defined the position of medical personnel and chaplains retained with a view to assisting prisoners of war. Each person in this category shall enjoy all necessary facilities for the carrying out of his duties and have at the same time the protection of the Convention without being considered a prisoner of war.

It had at one time been considered that a marginal note should be added to this Article quoting the new text of Article 28 of the Wounded and Sick Convention. It was recalled in this respect that the text of the POW Convention would serve as a guide to camp commandants, who should also be in possession of the Wounded and Sick Convention and therefore have ready access to the provisions dealing with retained medical personnel and chaplains. It was also proposed to insert either a part or the whole of Article 28, of the Wounded and Sick Convention in this Convention as a fresh Article. The Committee rejected these suggestions by a small majority.



POSSIBLE QUESTIONS

1. Q - Wherein does treatment of medical personnel and chaplains differ from that of prisoners of war?

A - They cannot be forced to perform duties outside their professional field and must be allocated among the various camps so as to minister to their own nationals.

2. Q - If medical personnel and chaplains are not considered prisoners of war, how is it possible to maintain discipline over them?

A - They probably retain the benefits of the provisions of GPW relating to the discipline of prisoners of war (Arts. 82 et seq., GPW). It would obviously be unthinkable that medical personnel who have committed serious offenses should go unpunished because they are not prisoners of war.

## ARTICLES 34, 35, 36 &amp; 37

SUBSTANCE

Prisoners of war shall enjoy religious freedom, and ministers who fall into the hands of the enemy shall be entitled to minister to prisoners of war of the same religion.

PRESENT TEXTS

## Article 34

"Prisoners of war shall enjoy complete latitude in the exercise of their religious duties, including attendance at the service of their faith, on condition that they comply with the disciplinary routine prescribed by the military authorities.

"Adequate premises shall be provided where religious services may be held."

## Article 35

"Chaplains who fall into the hands of the enemy Power and who remain or are retained with a view of assisting prisoners of war, shall be allowed to minister to them and to exercise freely their ministry amongst prisoners of war of the same religion, in accordance with their religious conscience. They shall be allocated among the various camps and labour detachments containing prisoners of war belonging to the same forces, speaking the same language or practicing the same religion. They shall enjoy the necessary facilities, including the means of transport provided for in Article 33, for visiting the prisoners of war outside their camp. They shall be free to correspond, subject to censorship, on matters concerning their religious duties with the ecclesiastical authorities in the country of detention and with international religious organizations. Letters and cards which they may send for this purpose shall be in addition to the quota provided for in Article 71."

## Article 36

"Prisoners of war who are ministers of religion, without having officiated as chaplains to their own forces, shall be at liberty, whatever their denomination, to minister freely to the members of their community. For this purpose, they shall receive the same treatment as the chaplains retained by the Detaining Power. They shall not be obliged to do any other work."

## Article 37

"When prisoners of war have not the assistance of a retained chaplain or of a prisoner of war minister of their faith, a minister belonging to the prisoners' or a similar denomination, or in his absence a qualified layman, if such a course is feasible from a confessional point of view, shall be appointed, at the request of the prisoners concerned and, wherever necessary, with the approval of the local religious authorities of the same faith. The person thus appointed shall comply with all regulations established by the Detaining Power in the interests of discipline and military security."

PREVIOUS TEXTS

Articles 34 and 35 replace Article 16 GPW 1929:

Article 16 of the 1929 POW Convention

"Prisoners of war shall enjoy complete liberty in the exercise of their religion, including attendance at the services of their faith, on the sole condition that they comply with the measures of order and policy issued by the military authorities."

"Ministers of a religion, prisoners of war, whatever their religious denomination, shall be allowed to minister fully to members of the same religion."

Articles 36 and 37 are new.

BACKGROUND

## 1. Substantive Changes

The provisions of Articles 36 and 37 are new, as is the requirement that chaplains be allocated among the camps.

## 2. Past U. S. Practices

The following provision appears in TM 19-500, Enemy Prisoners of War:

"Prisoners will enjoy freedom of religions including attendance at services of their respective faiths held within the prisoner of war camps."

"Prisoners who are clergymen may minister freely to prisoners who voluntarily request their ministrations. Prisoner clergymen approved by the camp commander will be given the necessary free time for the performance of their religious work and will be paid therefor at the rate of 80¢ per day. Sermons

by prisoner clergymen will be reviewed by the camp chaplain before delivery.

"Prisoner clergymen, subject to the approval of the camp commander, may be permitted to visit prisoner of war branch camps under guard for the purpose of conducting religious services. In ministering to prisoners of war at branch camps, visiting prisoner clergymen will be subject to the same regulations that apply to visiting civilian clergymen.

"Other duly ordained clergymen may enter camps and conduct religious services by permission of the camp commander upon the recommendation of the chaplain of the camp, or the nearest available post or camp chaplain if the camp has no chaplain." (Page 2.28)

### 3. Drafting History

These Articles concerning the exercise of religion make more methodical and complete provision on this subject than the 1929 Convention.

It appeared necessary to stipulate that ministers of religion who are prisoners of war and who carried out their duties might not be compelled to undertake any other form of work. This meant that, although the Detaining Power cannot compel them to undertake any form of labor beyond the exercise of their ministry, they remain free to participate in some of the work of the other prisoners. (IIA Final Record Dipl Conf of 1949, 565).

It was also necessary to consider the case of prisoners of war for whom no minister of their own religion is available; Article 30C(37) is intended to provide for such cases. In order to meet a point raised by the Indian Delegate, it was decided that a qualified layman could be authorized to assist his coreligionists spiritually; but the procedure for making such appointments raised a serious problem. Several Delegations considered, however, that this might give the Detaining Power an opportunity of providing the prisoners with a minister of religion, or a qualified layman, who might actually be a propaganda agent.

The Special Committee therefore thought it wiser to specify that the appointment of a minister of religion for prisoners of war who were without one should be made at the request of the prisoner-of-war community concerned, and that such an appointment would merely be subject to the approval of the Detaining Power, and if this were necessary from an ecclesiastical point of view, of the local religious authorities.



POSSIBLE QUESTIONS

Q - Must churches be built for prisoners?

A - Not necessarily. Any building which could be used to conduct services would be sufficient.

## ARTICLE 38

SUBSTANCE

Intellectual, educational and recreational pursuits amongst prisoners shall be encouraged.

PRESENT TEXT

"While respecting the individual preferences of every prisoner, the Detaining Power shall encourage the practice of intellectual, educational, and recreational pursuits, sports and game amongst prisoners, and shall take the measures necessary to ensure the exercise thereof by providing them with adequate premises and necessary equipment.

"Prisoners shall have opportunities for taking physical exercise, including sports and games, and for being out of doors. Sufficient open spaces shall be provided for this purpose in all camps."

PREVIOUS TEXTSArticle 17, GPW 1929

"So far as possible, belligerents shall encourage intellectual diversions and sports organized by prisoners of war."

Article 13, GPW 1929

"It shall be possible for them to take physical exercise and enjoy the open air."

BACKGROUND

## 1. Substantive Changes

This Article merely amplifies the provisions which were contained in the 1929 Convention.

## 2. Past U. S. Practices

"Prisoners will be aided in developing among themselves classes, lectures, studies, and discussion groups. Emphasis normally will be placed upon basic courses such as reading, writing, geography, mathematics, languages, music, arts, history, and literature. Prisoners will be permitted to organize courses and seminars on higher educational levels and in other subjects. At the discretion of the camp commander, reasonable expenses of educational activities will be paid for from the camp prisoner of war fund, provided substantial numbers of prisoners benefit thereby." Page 2.26 TM 19-500.

"Sports and athletic contests may be organized by the prisoners. Sufficient space, to the extent authorized, will be provided by the camp commander for outdoor and indoor recreational purposes. Prisoners will be privileged to participate optionally in organized calisthenics and athletic contests which will be conducted under the supervision of the camp commander or his representative." Page 2.26 TM 19-500.

POSSIBLE QUESTIONS

Q - Can the Detaining Power compel the prisoners to engage in a recreational or intellectual program which would have the actual purpose of "brainwashing"?

A - No. This section requires that adequate premises be made available to the prisoners and that opportunities be given to them for their use. Enforced attendance at lectures extolling the virtues of any particular political system would not be sanctioned under this article, although there is no prohibition herein against voluntary participation by prisoners of war in a propaganda program.



## ARTICLE 39

SUBSTANCE

Every prisoner of war camp shall be under the immediate authority of a responsible commissioned officer. Prisoners of war shall salute officers of the Detaining Power.

PRESENT TEXT

"Every prisoner of war camp shall be put under the immediate authority of a responsible commissioned officer belonging to the regular armed forces of the Detaining Power. Such officer shall have in his possession a copy of the present Convention; he shall ensure that its provisions are known to the camp staff and the guard and shall be responsible, under the direction of his government, for its application.

"Prisoners of war, with the exception of officers, must salute and show to all officers of the Detaining Power the external marks of respect provided for by the regulations applying in their own forces.

"Officer prisoners of war are bound to salute only officers of a higher rank of the Detaining Power; they must, however, salute the camp commander regardless of his rank."

PREVIOUS TEXTS

## Article 18, GPW, 1929

"Every camp of prisoners of war shall be placed under the command of a responsible officer.

"Besides the external marks of respect provided by the regulations in force in their armies with regard to their nationals, prisoners of war must salute all officers of the Detaining Power.

"Officers who are prisoners of war are bound to salute only officers of a higher or equal rank of that Power."

BACKGROUND

## 1. Past U.S. Practices

"When the National Anthem is played \* \* \* prisoners not in buildings will stand at attention and face the music or the colors."

"In addition to the courtesies required by regulations in force in their own armies toward their officers, enlisted prisoners will salute all commissioned officers of the United States Armed Forces. Officer prisoners are required to salute only officers of a higher or equal rank but will return all salutes." (Page 2.37, TM 19-500)

## 2. Drafting History

The wording of this section has been amplified in order to define more clearly and to lay stress on the responsibility of the officer in charge of the camp. The term "commissioned officer" has been used rather than merely "officer" in order to prevent a recurrence of the practice of putting non-commissioned officers in charge of prisoner of war camps as occurred in Japan during World War II.

In the Stockholm Draft the clause "under the direction of the government" at the close of the first paragraph had been inserted. The Coordination Committee suggested that these words be deleted in order to bring this article in line with Article 88 of the Civilians Convention. It was also felt that this wording might give the officer in charge an excuse for relieving himself from any responsibility. The proposal was rejected by the Committee by a vote of 16 to 7. The apparent feeling was that the present wording placed responsibility on both the commandant of the camp and the Government.

ARTICLE 40

SUBSTANCE

Permits the wearing of badges of rank and nationality.

PRESENT TEXT

"The wearing of badges of rank and nationality, as well as decorations, shall be permitted.

PREVIOUS TEXTS

Article 19, GPW, and 1929 POW Convention

"The wearing of insignia of rank and of decorations shall be permitted."

BACKGROUND

1. Substantive Changes

Prisoners of war are now permitted to wear indicia of nationality.

2. Drafting History

This section was adopted unanimously after it had been explained that it was the same as the earlier provision of the 1929 Convention except for the additional privilege of wearing badges of nationality.

POSSIBLE QUESTIONS

Q - What is a badge of nationality?

A - Any insigne indicating the country of origin.

## ARTICLE 41

SUBSTANCE

Requires the posting of the Convention and orders relating to the conduct of prisoners in the prisoners' language.

PRESENT TEXT

"In every camp the text of the present convention and its Annexes and the contents of any special agreement provided for in Article 6, shall be posted, in the prisoners' own language, in places where all may read them. Copies shall be supplied, on request, to the prisoners who cannot have access to the copy which has been posted.

"Regulations, orders, notices and publications of every kind relating to the conduct of prisoners of war shall be issued to them in a language which they understand. Such regulations, orders and publications shall be posted in the manner described above and copies shall be handed to the prisoners' representative. Every order and command addressed to prisoners of war individually must likewise be given in a language which they understand."

PREVIOUS TEXT

## Article 20, GPW, 1929

"Regulations, orders, notices and proclamations of every kind must be communicated to prisoners of war in a language which they understand. The same principle shall be applied in examinations."

## Article 84, GPW, 1929

"The text of the present Convention and of the special conventions provided for in the foregoing article, shall be posted, wherever possible in the native language of the prisoners of war, in places where it may be consulted by all the prisoners.

"The text of these conventions shall be communicated to prisoners who find it impossible to get the information from the posted text, upon their request."

BACKGROUND

## 1. Substantive Changes

None.



ARTICLE 42

SUBSTANCE AND PRESENT TEXT

"The use of weapons against prisoners of war, especially against those who are escaping or attempting to escape shall constitute an extreme measure, which shall always be preceded by warnings appropriate to the circumstances."

PREVIOUS TEXTS

None.

BACKGROUND

1. Past U.S. Practices

TM 19-500 Enemy Prisoners of War provided:

"If a prisoner attempts to escape or pass a defined limit, the sentinel or any member of the guard who sees him will shout HALT! If the prisoner fails to halt immediately, the sentinel or guard will shout HALT a second time and, if necessary, a third time. Thereafter, if there appears to be no other means of preventing his escape, the sentinel or guard will fire at him."  
Page 2.33

2. Drafting History

This is a new article which was deemed necessary in view of WW II experiences.

POSSIBLE QUESTIONS

1. Q - What should be done if a prisoner attempts to escape?

A - The procedure set forth in TM 19-500 above fulfills the requirement of this Article.

ARTICLES 43, 44, 45

SUBSTANCE

Prisoners of war shall be treated in accord with their rank and age.

PRESENT TEXT

Article 43

"Upon the outbreak of hostilities, the Parties to the conflict shall communicate to one another the titles and ranks of all the persons mentioned in Article 4 of the present Convention, in order to ensure equality of treatment between prisoners of equivalent rank. Titles and ranks which are subsequently created shall form the subject of similar communications.

"The Detaining Power shall recognize promotions in rank which have been accorded to prisoners of war and which have been duly notified by the Power on which these prisoners depend."

Article 44

"Officers and prisoners of equivalent status shall be treated with the regard due to their rank and age.

"In order to ensure service in officers' camps, other ranks of the same armed forces who, as far as possible, speak the same language, shall be assigned in sufficient numbers, account being taken of the rank of officers and prisoners of equivalent status. Such orderlies shall not be required to perform any other work.

"Supervision of the mess by the officers themselves shall be facilitated in every way."

Article 45

"Prisoners of war other than officers and prisoners of equivalent status shall be treated with the regard due to their rank and age.

"Supervision of the mess by the prisoners themselves shall be facilitated in every way."

PREVIOUS TEXTS

Article 21, GPW 1929

"Upon the beginning of hostilities, belligerents shall be bound to communicate to one another the titles and ranks in use in their respective armies, with a view to assuring equality of treatment between corresponding ranks of officers and persons of equivalent status.

"Officers and persons of equivalent status who are prisoners of war shall be treated with the regard due their rank and age."

#### Article 22, GPW 1929

"In order to assure service in officers' camps, soldiers of the same army who are prisoners of war and, wherever possible, who speak the same language, shall be assigned thereto, in sufficient numbers, considering the rank of the officers and persons of equivalent status.

"The latter shall secure their food and clothing from the pay which shall be granted them by the Detaining Power. Administration of the mess-fund by the officers themselves must be facilitated in every way."

#### BACKGROUND

##### 1. Substantive Changes

- a. Non-commissioned officers retain their privileges in captivity.
- b. Promotions in rank of prisoners of war are recognized.
- c. Officers no longer have to provide for their own food and clothing out of what they are paid.

##### 2. Past U. S. Practices

"No evidence of promotion of a prisoner which is received by the War Department after the prisoner has come into the custody of the U.S will be recognized by the U.S. Government as accomplishing the promotion of the prisoner." (Page 2.9 TM 19-500, Enemy Prisoners of War.)

[It is obvious that in the light of Article 43 it will be necessary to revise United States practice in this field to provide for the recognition of valid, bona fide promotions of prisoners of war.]

ARTICLE 46

SUBSTANCE

The interests and welfare of the prisoners shall be considered when they are being transferred.

PRESENT TEXT

"The Detaining Power, when deciding upon the transfer of prisoners of war, shall take into account the interests of the prisoners themselves, more especially so as not to increase the difficulty of their repatriation.

"The transfer of prisoners of war shall always be effected humanely and in conditions not less favourable than those under which the forces of the Detaining Power are transferred. Account shall always be taken of the climatic conditions to which the prisoners of war are accustomed and the conditions of transfer shall in no case be prejudicial to their health.

"The Detaining Power shall supply prisoners of war during transfer with sufficient food and drinking water to keep them in good health, likewise the necessary clothing, shelter and medical attention. The Detaining Power shall take adequate precautions especially in case of transport by sea or by air, to ensure their safety during transfer, and shall draw up a complete list of all transferred prisoners before their departure."

PREVIOUS TEXTS

None.

BACKGROUND

1. World War II Experiences

One incident which immediately comes to mind is the death march which was conducted on Bataan after the fall of Corregidor. American prisoners were forced to march for long periods with neither adequate food or shelter. Those who were unable to continue were shot or left to die at the side of the road. There had also been a march in Borneo where some four thousand prisoners had started out, and only a few survived.

2. Drafting History

The title "Transfer of Prisoners of War after their arrival in Camp" was chosen to avoid any confusion with the Articles on evacuation. Two principles are embodied in this Article: first, transfers are to be effected under conditions similar to those obtaining for the forces of the Detaining Power. The second principle is



that the Detaining Power must deal humanely with prisoners of war and supply them during transfer with the necessary food, clothing and medical attention.

Consideration was given to the possibility of special markings for transports carrying Prisoners of War. It was observed that this would probably lead to abuses of the use. General Parker (United States) stated that there had been instances in the last war in which American Prisoners of War had been killed by U.S. bombers while they were in convoy, and although the U.S. desired to do everything possible to safeguard our troops who were captured the proposal to have special markings was not deemed to be adequate and no practical solution had been devised.

POSSIBLE QUESTIONS

Q - Does this section preclude evacuation of prisoners to the U.S. as was done in the last war?

A - No. This Article requires consideration both of the immediate interests of the prisoner, and of the principle of not increasing the difficulty of repatriation at a later date. If transfer to the U.S. is necessary to protect prisoners, such transfer would be permissible even though it might entail a greater difficulty in repatriation at a later date. Considerations of security and national interest are to be given due weight in determining the advisability of a transfer of prisoners.

ARTICLE 47

SUBSTANCE

Forbids transfer endangering health of sick and wounded or safety in cases where combat zone is approaching camps, unless the risk of staying is greater.

PRESENT TEXT

"Sick or wounded prisoners of war shall not be transferred as long as their recovery may be endangered by the journey, unless their safety imperatively demands it.

"If the combat zone draws closer to a camp, the prisoners of war in the said camp shall not be transferred unless their transfer can be carried out in adequate conditions of safety, or unless they are exposed to greater risks by remaining on the spot than by being transferred."

PREVIOUS TEXTS

Article 25, GPW, 1929

"Unless the conduct of military operations so requires, sick and wounded prisoners of war shall not be transferred as long as their recovery might be endangered by the trip."

BACKGROUND

1. Substantive Changes

The second paragraph relating to transfers when the combat zone draws near is new.

2. Drafting History

Mr. Wilhelm (International Committee of the Red Cross) explained that Article 39 reproduced a provision of the 1929 Convention, which had, however, to be modified and expanded in order to take into account certain experiences in Germany towards the end of the war.

## ARTICLE 48

SUBSTANCE

Requires that prisoners of war, if transferred, must be advised of their departure and of their new address. They shall be allowed to take with them their personal effects.

PRESENT TEXT

"In the event of transfer, prisoners of war shall be officially advised of their departure and of their new postal address. Such notifications shall be given in time for them to pack their luggage and inform their next of kin.

"They shall be allowed to take with them their personal effects, and the correspondence and parcels which have arrived for them. The weight of such baggage may be limited, if the conditions of transfer so require, to what each prisoner can reasonably carry, which shall in no case be more than twenty-five kilograms per head.

"Mail and parcels addressed to their former camp shall be forwarded to them without delay. The camp commander shall take, in agreement with the prisoners' representative, any measures needed to ensure the transport of the prisoners' community property and of the luggage they are unable to take with them in consequence of restrictions imposed by virtue of the second paragraph of this Article.

"The costs of transfers shall be borne by the Detaining Power."

PREVIOUS TEXTS

## Article 26, GPW, 1929

"In case of transfer, prisoners of war shall be officially notified of their new destination in advance; they shall be allowed to take with them their personal effects, their correspondence and packages which have arrived for them.

"All due measures shall be taken that correspondence and packages addressed to their former camp may be forwarded to them without delay.

"Money deposited to the account of transferred prisoners shall be transmitted to the competent authority of their new place of residence.

"The expenses occasioned by the transfer shall be charged to the Detaining Power."

BACKGROUND

## 1. Substantive Changes

The limitation on the amount of weight that may be carried is new.

## 2. Drafting History

There was some discussion whether the limitation on the allowable weight should read "more" or "less" than twenty-five kilograms per head. It was finally decided that no more than twenty-five kilograms should be permitted, in order to prevent prisoners from being forced to carry excessive amounts for long distances with resultant physical hardship.



POSSIBLE QUESTIONS

1. Q - How much is 25 kilograms?

A - 55.12 pounds.

## ARTICLE 49

SUBSTANCE

Permits utilization of physically fit prisoners of war for labor, subject to consideration for their physical aptitude, age, rank and sex and their continued physical and mental good health. Forbids compelling officers to work, or compelling non-commissioned officers to do other than supervisory work.

PRESENT TEXT

"The Detaining Power may utilize the labour of prisoners of war who are physically fit, taking into account their age, sex, rank and physical aptitude, and with a view particularly to maintaining them in a good state of physical and mental health.

"Non-commissioned officers who are prisoners of war shall only be required to do supervisory work. Those not so required may ask for other suitable work which shall, so far as possible, be found for them.

"If officers or persons of equivalent status ask for suitable work, it shall be found for them, so far as possible, but they may in no circumstances be compelled to work."

PREVIOUS TEXTS

Article 27 (Par. 1, 2 and 3) GPW, 1929

"Belligerents may utilize the labor of able prisoners of war, according to their rank and aptitude, officers and persons of equivalent status excepted.

"However, if officers or persons of equivalent status request suitable work, it shall be secured for them so far as is possible.

"Non-commissioned officers who are prisoners of war shall only be required to do supervisory work, unless they expressly request a remunerative occupation."

BACKGROUND

## 1. Substantive Changes

The 1929 Convention provided that able prisoners of war could be utilized for labor according to their rank and aptitude, officers and persons of equivalent status excepted. The 1949 Convention retains these provisions and, in addition, requires that account be taken of the prisoners' age and sex and the maintenance of their physical and mental health.

## 2. Past Practices of the United States

War Department regulations which governed the treatment of prisoners of war during World War II are in substantial accord with the provisions of the present Article.

### 3. Diplomatic Conference at Geneva

The general provisions of this Article add to the rules laid down in the 1929 Convention that account shall be taken of the age and sex of prisoners of war, and that they should be maintained in a good state of physical and mental health. A proposal to insert in Article 49 an obligation to have a special medical examination of prisoners before assigning them to work, was rejected; the majority of Delegations were of the opinion that this point was covered by other Articles.

## ARTICLE 50

SUBSTANCE

Lists the broad classes of labor and industries in which prisoners of war may be compelled to perform work, and provides that prisoners may exercise their right of complaint should the provisions of this Article be infringed upon.

PRESENT TEXT

## Article 50

Besides work connected with camp administration, installation or maintenance, prisoners of war may be compelled to do only such work as is included in the following classes:

- (a) agriculture;
- (b) industries connected with the production or the extraction of raw materials, and manufacturing industries, with the exception of metallurgical, machinery and chemical industries; public works and building operations which have no military character or purpose;
- (c) transport and handling of stores which are not military in character or purpose;
- (d) commercial business, and arts and crafts;
- (e) domestic service;
- (f) public utility services having no military character or purpose.

Should the above provisions be infringed, prisoners of war shall be allowed to exercise their right of complaint, in conformity with Article 78.

PREVIOUS TEXTS

## Article 31 GPW 1929

"Labor furnished by prisoners of war shall have no direct relation with war operations. It is especially prohibited to use prisoners for manufacturing and transporting arms or munitions of any kind, or for transporting material intended for combatant units.

"In case of violation of the provisions of the preceding paragraph, prisoners, after executing or beginning to execute the order, shall be free to have their protests presented through the mediation of the agents whose functions are set forth in Articles 43 and 44, or, in the absence of an agent, through the mediation of representatives of the Protecting Power."

## Article 6, Hague Regulations

"The tasks shall not be excessive and shall have no connection with the operations of war."

BACKGROUND

## I. Substantive Additions or Changes to 1929 POW Convention

The 1929 Convention stipulated that the work of prisoners of war should have no direct relation to operations of war; it prohibited, in particular, their employment for the manufacture or transport of armaments as well as for the transport of material intended for the fighting forces. The present Article maintains this principle and clarifies it by a limitative enumeration of the categories of work which prisoners may be required to do, apart from that connected with camp administration, installation or maintenance. The enumeration of required categories of work includes agriculture, with certain important exceptions, industries connected with production or extraction of raw materials, manufacturing and commercial and artistic activities. The handling and transport of stores which are military in character or purpose may not be required. If they do not volunteer, freely, for such work prisoners may not be employed upon those specified areas set forth in Article 50 which have "military character or purpose". It is believed that the test of what work has military character or purpose will be whether the work directly contributes to the activities of the armed forces of the Detaining Power or is work which merely supports the normal civilian economy or discharges humanitarian and legal obligations with incidental effects beneficial to the Armed Forces.

## II. Past Practices of the United States

War Department regulations governing the treatment of prisoners of war during WW II, authorized the utilization of prisoners of war in "all those occupations which were normally necessary for the feeding, sheltering and clothing of human beings, even though such work might be performed for or result in benefit to members of the military establishment." Types of work, which prisoners were required to perform during WW II, but which they may not be required to perform under the present Convention, included the handling and transport of military store (except weapons, ammunition, explosives, etc.), salvage and reclamation activities, repair and operation of military vehicles, employment in quartermaster laundries and bakeries.

## "Section I. GENERAL POLICY

## 1. Utilization of Prisoner Labor

a. Prisoners will be employed so far as possible, for all work necessary for the administration, management and maintenance of prisoner of war camps.



b. Prisoners will be employed on essential skilled and unskilled work of the types permitted by the Geneva Convention (see section III of this chapter), other than that defined in a above, only when qualified civilian labour is not obtainable. Essential work is that which would have to be done whether or not there were any available prisoners.

### Section III. APPROVED AND DISAPPROVED WORK

#### 10. Work Relating to War Operations

##### a. Article 31 of the Geneva Convention contains---

(1) A general prohibition against using prisoners in work having a "Direct relation with war operations," and

(2) A particular prohibition against using prisoners "for manufacturing and transporting arms or munitions of any kind, or for transporting material intended for combatant units."

b. The general prohibition against using prisoners in work having a "direct relation with war operations" is construed to mean that prisoners may be employed in all those occupations which are normally necessary for the feeding, sheltering, and clothing of human beings as such, even though such work may be performed for, or result in benefits to, members of the Military Establishment, but prisoners may not be employed in work which is solely of value in assisting the conduct of active belligerent operations. Therefore, for example, prisoners may be employed to manufacture trucks and parts therefor, though these may eventually be put to military uses, but prisoners may not be employed to manufacture parts used exclusively for tanks, and, again prisoners may be used in agriculture, food processing, the manufacture of cloth and leather, and the like, though soldiers may consume the crops or wear the clothing and the shoes. The phrase "direct relation with war operations" cannot be defined with such particularity as to cover all possible situations. Doubtful cases will be referred for decision to The Provost Marshal General.

c. The second prohibition contained in Article 31 forbids the use of prisoners in the manufacture, including salvage or repair, or transport of arms or munitions of any kind. The phrase "arms or munitions" refers to explosives, ammunition, weapons, aircraft or naval craft, tanks, or any other lethal device, or parts therefor, designed exclusively for combat. The Article in discussion also prohibits the use of prisoners for transporting material intended for combatant units. This prohibition covers not only arms or munitions but all material intended for such units, including that required for their

feeding, clothing, and sheltering. "Combatant units" means units actually engaged, or about to engage, in operations against the enemy. (TM 19-500, Chap 5, Para. 1, 9, 10)

### III. Diplomatic Conference at Geneva

The text of the present Article, with minor changes, was drawn up by the International Committee of the Red Cross and presented at the Stockholm Conference but was rejected by that Conference in favor of the more generally worded Article quoted:

"In addition to labour performed in connection with camp administration, installation or maintenance, prisoners of war may only be required to do work which is normally required for the feeding, sheltering, clothing, transportation and health of human beings, but may not be employed in work which is otherwise of value in assisting the conduct of active military operation.

"Should the above provisions be violated, prisoners of war shall be allowed to exercise their right of complaint, in conformity with Article 68".

In Committee II, delegations favoring the quoted text argued that attempts to enumerate classes of work, however detailed, would nevertheless still be incomplete. The opposing view was that the text drawn up at Stockholm was too vague and might lead to misunderstanding. This latter view finally prevailed and the present Article, which enumerates the types of work in which prisoners may be required to engage, was adopted by a majority vote in Committee II and later in the General Assembly.

The use of the word "compelled" as opposed to the word "employed" in the first paragraph of this Article is particularly significant. As originally introduced by The International Committee of the Red Cross, the first paragraph of this Article read as follows:

"Besides work done in connection with camp administration, installation or maintenance, prisoners of war may only be obliged to do work included in the following classes of economic activity."

Subsequently the words "employed on" were substituted as a drafting amendment, for the words "obliged to". Vigorous exception to this amendment was taken by Mr. Gardner (United Kingdom) who stated in part, "...the amendment in question completely altered the meaning of the Article. The word "employed" had been substituted for "obliged" in the first paragraph of Article 42. The new wording thus prohibited the prisoner from volunteering to remove mines, or for any other form of work not specified in the Article." He therefore proposed reverting to the words "obliged to" which had been used in the text submitted by The

International Committee of the Red Cross at the Stockholm Conference. During the discussion on the proposed change it was noted that the word "obliged" would permit prisoners to volunteer. With the full implication of the difference in the wording in mind the delegates, by a fifteen to six vote with five abstentions, decided to revert to the original wording. Subsequently, as a drafting change, the word "compelled" was substituted for the word "obliged".

In view of the foregoing it has been concluded that prisoners of war may volunteer for types of labor which they otherwise could not be forced to perform under this article.

POSSIBLE QUESTIONS

Q - Is it not possible that an unscrupulous Detaining Power might abuse the provision which permits prisoners to "volunteer" for dangerous labor?

A - Yes, however, safeguards against such violations rest in the right of the prisoners to voice complaints to the representatives of the Protecting Power and the right of such representatives to visit and inspect all prisoner of war camps and labor detachments.

Q - May prisoners of war be required to perform types of work not included in the categories enumerated in Article 50?

A - No.

Q - May prisoners of war be permitted to perform types of work not included in the categories enumerated in Article 50, provided they volunteer to do so (i.e., loading, or unloading of rations intended for consumption by United States Military personnel)?

A - Yes. It was in order that prisoners might volunteer to perform type of work not included in the categories enumerated in Article 50, that the word "compelled" rather than the word "employed" was used in the first paragraph of the Article.

Q - Is there any restriction on the type of work which prisoners may either be required or may volunteer to perform?

A - Yes. Article 52 provides, without qualifications, that prisoners may not be assigned to labor which would be looked upon as humiliating for a member of the Detaining Powers' own forces. Also Article 19, which specifies that prisoners must be evacuated to camps situated in an area far enough from the combat zone for them to be out of danger, effectively prohibits any real utilization of prisoners in the combat zones or forward areas.

Q - Would not the act of volunteering to perform types of work which they may not be compelled to perform under Article 50, constitute a renunciation by the prisoners of certain of the rights secured to them by the Convention and thereby be in violation of Article 7?

A - No, provided that while engaged in performing "voluntary work," the prisoner retains the privilege of being able to refuse at any time to continue in the performance of that work. The Convention does not prohibit the right of the prisoner to volunteer to perform certain types of labor. Article 52 specifically provides that prisoners may not be required but may volunteer to engage in "labour which is of an unhealthy or dangerous nature" including the "removal of mines or similar devices."



Q - What important effect, if any, does Article 50 have on the utilization of prisoners of war as practiced by the United States during World War II?

A - Under War Department regulations governing the treatment of prisoners of war during World War II, prisoners were required to perform certain types of work which were in support of military operations and activities. Under the present Convention, the utilization of prisoners of war for work in support of military activities is dependent upon the voluntary cooperation of the individual prisoners.



## ARTICLE 51

SUBSTANCE

Requires that working conditions for prisoners not be inferior to those provided for nationals of the Detaining Power, that national legislation concerning the protection of labor be observed, that training in the type of work to be performed be provided and that work not be made more arduous by disciplinary measures.

PRESENT TEXT

"Prisoners of war must be granted suitable working conditions, especially as regards accomodation, food, clothing and equipment; such conditions shall not be inferior to those enjoyed by nationals of the Detaining Power employed in similar work; account shall also be taken of climatic conditions.

"The Detaining Power, in utilizing the labour of prisoners of war, shall ensure that in areas in which such prisoners are employed, the national legislation concerning the protection of labour, and, more particularly, the regulations for the safety of workers, are duly applied.

"Prisoners of war shall receive training and be provided with the means of protection suitable to the work they will have to do and similar to those accorded to the nationals of the Detaining Power. Subject to the provisions of Article 52, prisoners may be submitted to the normal risks run by these civilian workers.

"Conditions of labour shall in no case be rendered more arduous by disciplinary measures."

PREVIOUS TEXTS

Paragraphs 1, 2 and 3 of Article 51 are new. Paragraph 4 replaces paragraph 2, Article 32 of GPW, 1929.

"Any aggravation of the conditions of labor by disciplinary measures is forbidden."

BACKGROUND

## 1. Substantive Changes

The 1949 Convention added the requirement that working conditions conform to those provided for nationals of the country in which they are detained, particularly as regards laws and regulations for the safety of workers.

## 2. Past United States Practices

War Department regulations governing the treatment of

prisoners of war, as published during World War II required that on-the-job determinations be made and followed as to the suitability of work on which prisoners were to be employed, taking into consideration three basic factors: the inherent nature of the job, the actual working conditions and the prisoners physical fitness and training. The providing of adequate equipment and of safety devices which were on a parity with the safeguards provided for civilian labor was also required.

### 3. Diplomatic Conference at Geneva

The first three paragraphs of this Article, which are new, ensure prisoners of war the treatment given to nationals of the country in which they are detained, particularly as regards the application of the laws for the safety of workers.

The last paragraph merely reproduces the substance of the second paragraph of Article 32 of the 1929 Convention.

POSSIBLE QUESTIONS

1. Q - Should the USSR select as its standard of national treatment the treatment accorded its slave laborers, what recourse does the US have under this Article? Under other Articles of the Convention?

A - The standard of labor for the free, paid laborer, not that for the slave laborer, must be applied, or the overriding requirement for humane treatment would be nullified. This article, like others, sets an objective standard for conditions of labor, by its reference to "suitable" conditions. Still other articles, such as Art. 53, GPW, dealing with periods of rest, give specific requirements.

ARTICLE 52

SUBSTANCE

Prohibits employment of prisoners on unhealthy or dangerous labor unless they volunteer, provides that they may not be assigned to work which is humiliating and establishes the removal of mines and similar devices as dangerous labor.

PRESENT TEXT

"Unless he be a volunteer, no prisoner of war may be employed on labour which is of an unhealthy or dangerous nature.

"No prisoner of war shall be assigned to labour which would be looked upon as humiliating for a member of the Detaining Power's own forces.

"The removal of mines or similar devices shall be considered as dangerous labour."

PREVIOUS TEXTS

Article 32, S 1, GPW, 1929

"It is forbidden to use prisoners of war at unhealthy or dangerous work."

BACKGROUND

1. Substantive Changes

The 1929 Convention has been modified to provide that "Unless he be a volunteer, no prisoner of war may be employed on labour which is of an unhealthy or dangerous nature." Additional provisions prohibit the assignment of prisoners to labour looked upon as humiliating and classify the removal of "mines and similar devices" as dangerous labour. This latter reference to mines is new.

2. Past US Practices

War Department regulations governing the treatment of prisoners of war during World War II prohibited the employment of prisoners on degrading of menial labor and specified that prisoners would not be permitted to handle or use explosives.

3. Diplomatic Conference at Geneva

This Article modifies the principle laid down in the 1929 Convention whereby a flat prohibition was established against the use of prisoners of war for unhealthy or dangerous labor. Although the last paragraph specifies that the removal of mines and similar devices is considered to be dangerous labor, several Delegations desired an express prohibition of the employment of prisoners of war

on the removal of mines or similar devices by specifying this as a special category of dangerous work. It was well known that during and at the end of the last World War, prisoners were detailed for mines removal in a large number of countries and the work often resulted in serious loss of life. In the circumstances, several Delegations considered it imperative from a humanitarian point of view, that prisoners of war should no longer be exposed to the risks entailed by this particular kind of labour. The opposite thesis was that it would be equally inhuman to exclude the possibility of employing prisoners of war - who might themselves have laid the mines and be accustomed to the work, or who could, as members of a disciplined military force, be easily trained to carry it out - when otherwise, mines removal would as often as not have to be carried out by the civilian population.

The present Article, which provides that the removal of mines is considered as dangerous labor but which also permits the use of "volunteer" prisoners for such labor, was adopted by a majority vote in the Plenary Assembly.



POSSIBLE QUESTIONS

1. Q - Is it not possible that unscrupulous Powers may abuse the provision which permits prisoners to "volunteer" for dangerous labor?

A - Yes, however, safeguards against such violations rest in the right of the prisoners to voice complaints to the representatives of the Protecting Power and the right of such representatives to visit and inspect all prisoner of war camps and labor detachments. Furthermore, mistreatment of prisoners, while always a possibility, inevitably is discovered and the fact that volunteering may not have been bona fide will soon be known.

## ARTICLE 53

SUBSTANCE

Requires that hours of labor and rest for prisoners conform to those for civilian workers in the same area and that eight consecutive days of rest with pay be granted to each prisoner for each years work.

PRESENT TEXT

"The duration of the daily labour of prisoners of war, including the time of the journey to and fro, shall not be excessive, and must in no case exceed that permitted for civilian workers in the district, who are nationals of the Detaining Power and employed on the same work.

"Prisoners of war must be allowed, in the middle of the day's work, a rest of not less than one hour. This rest will be the same as that to which workers of the Detaining Power are entitled, if the latter is of longer duration. They shall be allowed in addition a rest of twenty-four consecutive hours every week, preferably on Sunday or the day of rest in their country of origin. Furthermore, every prisoner who has worked for one year shall be granted a rest of eight consecutive days, during which his working pay shall be paid him.

"If methods of labour such as piece work are employed, the length of the working period shall not be rendered excessive thereby."

PREVIOUS TEXTS

## Article 30 GPW, 1929

"The length of day's work of prisoners of war, including therein the trip going and returning, shall not be excessive and must not, in any case, exceed that allowed for the civil workers in the region employed at the same work. Every prisoner shall be allowed a rest of twenty-four consecutive hours every week, preferably on Sunday."

BACKGROUND

## 1. Substantive Changes

The 1949 Convention introduced new requirements that an hour's rest be provided at mid-day, that there be eight consecutive days of rest with pay for each year of work and that the length of the working period may not be rendered excessive by the use of piece work or other such methods of labor.

## 2. Past US Practices

War Department regulations which governed the treatment of prisoners of war during World War II were in substantial accord with the provisions of the 1949 Convention, except with regard to the new provision of the present Article that eight consecutive days of rest with pay be granted for each year of work. (TM 19-500, 1944, Ch. V, Para. 20, 21)

## 3. Drafting History

The idea of fixing a maximum working day was discussed at length, but was abandoned because it would be difficult to have it accepted by the civilian population. The present text was unanimously adopted.

POSSIBLE QUESTIONS

1. Q - Would it not be better to establish a maximum number of hours which prisoners might be required to work daily?

A - No. In many instances this would result in different working hours for civilians and prisoners of war who were performing the same type of labor in the same area and would tend to create dissatisfaction and antagonism on the part of the group working the greater number of hours. Also, agriculture which is one of the more important types of work in which prisoners engage, requires particularly long working days during the harvesting season, although during the winter the working day may not be more than five or six hours long.

## ARTICLE 54

SUBSTANCE

Requires that prisoners receive a fair working rate of pay (within the 1/4 of one Swiss franc minimum set by Article 62) and that those prisoners who are victims of working accidents be given all necessary medical care and a medical certificate which will enable them to submit their claims to the Power on which they depend.

PRESENT TEXT

"The working pay due to prisoners of war shall be fixed in accordance with the provisions of Article 62 of the present Convention.

"Prisoners of war who sustain accidents in connection with work, or who contract a disease in the course, or in consequence of their work, shall receive all the care their condition may require. The Detaining Power shall furthermore deliver to such prisoners of war a medical certificate enabling them to submit their claims to the Power on which they depend, and shall send a duplicate to the Central Prisoners of War Agency provided for in Article 123."

PREVIOUS TEXTS

## Article 27, S 4, GPW, 1929

"Belligerents shall be bound, during the whole period of captivity, to allow to prisoners of war who are victims of accidents in connection with their work the enjoyment of the benefit of the provisions applicable to laborers of the same class according to the legislation of the Detaining Power. With regard to prisoners of war to whom these legal provisions might not be applied by reason of the legislation of that Power, the latter undertakes to recommend to its legislative body all proper measures equitably to indemnify the victims."

BACKGROUND

## 1. Substantive Changes

The 1929 Convention charged the Detaining Power with responsibility for paying compensation to prisoner victims of working accidents. Under the 1949 Convention the Power on which the prisoner depends is solely responsible for paying such compensation. The only responsibility on the part of the Detaining Power is to furnish the wounded prisoners with adequate medical care and with certificates of injury. An additional provision requires that prisoners receive a fair working rate of pay in accordance with Article 62.



## 2. Past US Practices

War Department regulations which governed the treatment of prisoners of war during World War II provided for compensation pay at the rate of forty cents (\$.40) per day for not to exceed six days per week for the period of time a prisoner of war was prevented from working by an injury arising out of and in the course of labor assigned to him. All necessary medical care was provided. The rate of working pay for each day of work performed was established at eighty cents (\$.80) per day. (TM 19-500, 1944, Chap V, Para 25 and 29)

## 3. Drafting History

The Detaining Power is obliged to give a daily rest of one hour in the middle of the day, and as far as the weekly rest of prisoners is concerned, to take into account the day of rest observed in the prisoner's home country. In spite of certain difficulties of practical application which some Delegations thought would follow the insertion of these terms, a majority of the Committee at Geneva accepted them as being appropriate to the universal character of the Convention.

POSSIBLE QUESTIONS

1. Q - In view of the provisions that the Detaining Power need not compensate prisoners for injuries sustained, would not prisoners, deprived of any earning by reason of serious illness or injury, be without funds to purchase even the least of the items which might be purchased in the camp canteen by their more fortunate fellow prisoners?

A - No. Article 60 provides that each prisoner shall have a monthly advance of pay varying in amount from \$1.84 for ranks below sergeant to \$17.25 for general officers. This monthly advance of pay is separate from and must be made without regard to any working wages earned by the prisoner.

2. Q - What is the effect of this Article on state or federal legislation which would grant workmen's compensation to an injured prisoner of war employed by a private contractor?

A - The only recourse of the prisoner, provided by this Article, is to the country on which he depends.

SUBSTANCE

Requires monthly medical examination of prisoners to determine their fitness particularly with respect to the nature of the work they are to perform.

PRESENT TEXT

"The fitness of prisoners of war for work shall be periodically verified by medical examinations at least once a month. The examinations shall have particular regard to the nature of the work which prisoners of war are required to do.

"If any prisoner of war considers himself incapable of working, he shall be permitted to appear before the medical authorities of his camp. Physicians or surgeons may recommend that the prisoners who are, in their opinions, unfit for work, be exempted therefrom."

PREVIOUS TEXTS

## Article 29, GPW 1929

"No prisoner of war may be employed at labors for which he is physically unfit."

BACKGROUND

## 1. Substantive Changes

None. The present Article merely reproduces Article 29 of the 1929 Convention in greater detail by specifying that monthly physical examinations will be given and that requests by prisoners to appear before medical authorities must be granted.

## 2. Past U.S. Practices

War Department regulations which governed the treatment of prisoners of war during World War II were in substantial accord with the provisions of the present article. Prisoners were classified by doctors according to their ability to work and were then assigned to labor commensurate with their physical condition. Periodic physical examinations were required. (TM 19-500, Enemy Prisoners of War, para. 4e) October 1944.

POSSIBLE QUESTIONS

Article 55, GPW 1949

1. Q - Is this physical examination in addition to the one contemplated by Article 31?

A - Not necessarily. The general physical examination required by Article 31 might be normally sufficient. The examination under Article 55 would usually be more detailed and would be made with particular regard for the type of labor being performed.

## ARTICLE 56

SUBSTANCE

Requires that treatment and administration of prisoners assigned to labor detachments shall be similar to that provided at a prisoner of war camp and that responsibility for their control and administration shall lie with the designated prisoner of war camp commanders and their Government.

PRESENT TEXT

"The organization and administration of labour detachments shall be similar to those of prisoner of war camps.

"Every labour detachment shall remain under the control of and administratively part of a prisoner of war camp. The military authorities and the commander of the said camp shall be responsible, under the direction of their government, for the observance of the provisions of the present Convention in labour detachments.

"The camp commander shall keep an up-to-date record of the labour detachments dependent on his camp, and shall communicate it to the delegates of the Protecting Power, of the International Committee of the Red Cross, or of other agencies giving relief to prisoners of war, who may visit the camp."

PREVIOUS TEXTS

## Article 33, GPW 1929

"The system of labor detachments must be similar to that of prisoners-of-war camps, particularly with regard to sanitary conditions, food, attention in case of accident or sickness, correspondence and the receipt of packages.

"Every labor detachment shall be dependent on a prisoners' camp. The commander of this camp shall be responsible for the observation, in the labor detachment, of the provisions of the present Convention."

BACKGROUND

## 1. Substantive Changes

None, except that visiting representatives of the Protecting Power and International Committee of the Red Cross must be informed of the existence of labor detachments.

## 2. Past U. S. Practices

War Department regulations which governed the treatment of prisoners of war during World War II were in substantial accord with the



provisions of the present Article. Labor detachments were either detailed directly from the prisoner-of-war camps on a daily basis or branch camps, in which they were housed and administered, were established. Branch camps were under the administration and control of a parent prisoner-of-war camp. (TM 19-500, Chap. 2, para. 6b)

## ARTICLE 57

SUBSTANCE

Requires that treatment of prisoners working for private persons shall be in accord with the Geneva Convention. The military authorities are to remain responsible for their proper treatment.

PRESENT TEXT

"The treatment of prisoners of war who work for private persons, even if the latter are responsible for guarding and protecting them, shall not be inferior to that which is provided for by the present Convention. The Detaining Power, the military authorities and the commander of the camp to which such prisoners belong shall be entirely responsible for the maintenance, care, treatment, and payment of the working pay of such prisoners of war.

"Such prisoners of war shall have the right to remain in communication with the prisoners' representatives in the camps on which they depend."

PREVIOUS TEXTS

## Article 28, GPW 1929

"The Detaining Power shall assume entire responsibility for the maintenance, care, treatment and payment of wages of prisoners of war working for the account of private persons."

BACKGROUND

## 1. Substantive Changes

None. The present Article merely elaborates upon Article 28 of the 1929 Convention and specifies that prisoners of war working for private persons shall be permitted to remain in communication with the prisoners' representative in the camps on which they depend.

## 2. Past U. S. Practices

War Department regulations which governed the treatment of prisoners of war during World War II were in substantial accord with the provisions of the present Article. Prisoners of war who worked for private persons in the United States during World War II were either detailed directly from the camp on a daily basis or branch camps were established. In either case, they were under military control or supervision at all times. A prisoner of war representative was chosen for each branch camp and visits by the prisoners' representative of the camp which administered to the branch camp were permitted. (TM 19-500, Chap. 2, para. 16f)

## ARTICLE 58

SUBSTANCE

Provides that money which a prisoner is not permitted to retain in his personal possession shall be credited to his account and that payments for purchases outside the camp may be made by the prisoner or by the camp administration and charged to his account.

PRESENT TEXT

"Upon the outbreak of hostilities, and pending an arrangement on this matter with the Protecting Power, the Detaining Power may determine the maximum amount of money in cash or in any similar form, that prisoners may have in their possession. Any amount in excess, which was properly in their possession and which has been taken or withheld from them, shall be placed to their account, together with any monies deposited by them, and shall not be converted into any other currency without their consent.

"If prisoners of war are permitted to purchase services or commodities outside the camp against payment in cash, such payments shall be made by the prisoner himself or by the camp administration who will charge them to the accounts of the prisoners concerned. The Detaining Power will establish the necessary rules in this respect."

PREVIOUS TEXTS

## Article 24, GPW 1929

"Upon the outbreak of hostilities, the belligerents shall, by common agreement, fix the maximum amount of ready money which prisoners of war of various ranks and classes shall be allowed to keep in their possession. Any surplus taken or withheld from a prisoner shall be entered to his account, the same as any deposit of money effected by him, and may not be converted into another currency without his consent."

BACKGROUND

## 1. Substantive Changes

Payments for purchases made outside of the camp, if authorized, shall be made by the prisoner or by the camp administration who will charge such expenditures to the prisoner's account.

## 2. Past U. S. Practices

War Department regulations which governed the treatment of prisoners of war during World War II were in substantial accord with the

provisions of the present Article. Prisoners were not permitted to retain any currency in their possession but were issued coupon books with which to make purchases at the camp canteen. Payments for services or purchases outside of the camp were made by the camp administration and charged to the prisoner's account. (TM 19-500, Chap. 4, para. 1-2)

POSSIBLE QUESTIONS

Article 58, GPW, 1949

1. Q - What items or services might prisoners be permitted to purchase from civilian agencies?

A - Musical instruments, books and materials for use in connection with hobbies are among the items which might be approved for purchase. Also under certain conditions prisoners may be permitted to enroll, at their own expense in correspondence courses given by educational institutions. Authorization to make purchases outside of the camp would be subject to security considerations and availability of the items to be purchased.



# ARTICLE 59

## SUBSTANCE

Requires that money, which the prisoner is not permitted to retain but which is in the currency or which is transferred to the currency of the Detaining Power must be credited to his account.

## PRESENT TEXT

"Cash which was taken from prisoners of war, in accordance with Article 18, at the time of their capture, and which is in the currency of the Detaining Power, shall be placed to their separate accounts, in accordance with the provisions of Article 64 of the present Section.

"The amounts, in the currency of the Detaining Power, due to the conversion of sums in other currencies that are taken from the prisoners of war at the same time, shall also be credited to their separate accounts."

## PREVIOUS TEXT

None.

## BACKGROUND

### 1. Substantive Changes

This is a new Article.

### 2. Past US Practices

War Department regulations governing the treatment of prisoners of war during World War II were in substantial accord with the present Article. Money, in the currency of the United States which was found on a prisoner at time of capture and which was determined to have come into his possession by legitimate means, was taken from him and credited to his account. However, the conversion to United States currency of sums in other currencies taken from prisoners was not authorized. Foreign currencies found in the possession of a prisoner were taken from him and held in safekeeping as a part of his personal property. The unexplained possession by a prisoner of war of large sums of money has been held, in United States practice, to justify the belief that the money, especially if in the currency of the Detaining Power, has been stolen or looted and so may be confiscated. (TM 19-500, Chap. 4, Par 5)

Present regulations are being re-drafted to conform more closely to the requirements of this Article, although it is believed that unexplained possession of large sums of United States currency may continue to be at least a basis for inquiry and consideration of its source.

POSSIBLE QUESTIONS

Q - What basis would be used for converting foreign funds in a prisoner's possession to United States currency?

A - The Swiss franc might provide a satisfactory basis. Final determination in this regard might more appropriately be made after the outbreak of hostilities and in the light of circumstances then existing.

## ARTICLE 60

SUBSTANCE

Establishes minimum monthly advances of pay, ranging from eight Swiss francs (\$1.84) for grades below sergeant to seventy-five Swiss francs (\$17.25) for General Officers, to be granted all prisoners. Further provides for modification of these amounts by special agreement between Parties to the conflict.

PRESENT TEXT

"The Detaining Power shall grant all prisoners of war a monthly advance of pay, the amount of which shall be fixed by conversion, into the currency of the said Power, of the following amounts:

- "Category I : Prisoners ranking below sergeants: eight Swiss francs.
- "Category II : Sergeants and other non-commissioned officers, or prisoners of equivalent rank: twelve Swiss francs.
- "Category III : Warrant officers and commissioned officers below the rank of major or prisoners of equivalent rank: fifty Swiss francs.
- "Category IV : Majors, lieutenant-colonels, colonels or prisoners of equivalent rank: sixty Swiss francs.
- "Category V : General officers or prisoners of war of equivalent rank: seventy-five Swiss francs.

"However, the Parties to the conflict concerned may by special agreement modify the amount of advances of pay due to prisoners of the preceding categories.

"Furthermore, if the amounts indicated in the first paragraph above would be unduly high compared with the pay of the Detaining Power's armed forces or would, for any reason, seriously embarrass the Detaining Power, then, pending the conclusion of a special agreement with the Power on which the prisoners depend to vary the amounts indicated above, the Detaining Power:

- "(a) shall continue to credit the accounts of the prisoners with the amounts indicated in the first paragraph above;
- "(b) may temporarily limit the amount made available from these advances of pay to prisoners of war for their own use, to sums which are reasonable, but which, for Category I, shall never be inferior to the amount that the Detaining Power gives to the members of its own armed forces.

"The reasons for any limitations will be given without delay to the Protecting Power."

PREVIOUS TEXT

## Article 23, GPW, 1929

"Subject to private arrangements between Belligerent Powers, and particularly those provided in Article 24, officers and persons of equivalent status who are prisoners of war shall receive from the Detaining Power the same pay as officers of corresponding rank in the armies of that Power, on the condition, however, that this pay does not exceed that to which they are entitled in the armies of the country which they have served. This pay shall be granted them in full, once a month if possible, and without being liable to any deduction for expenses incumbent on the Detaining Power, even when they are in favor of the prisoners.

"An agreement between the belligerents shall fix the rate of exchange applicable to this payment; in the absence of such an agreement, the rate adopted shall be that in force at the opening of hostilities."

BACKGROUND

## 1. Substantive Changes

The 1929 Convention provided that officers and persons of equivalent status who were prisoners of war should receive from the Detaining Power the same pay as officers of corresponding rank in the armies of that Power and that the rate of exchange applicable to this pay should be fixed by agreement between the belligerents. The 1949 Convention divides all prisoners of war into five categories according to rank and provides a minimum advance of pay, in terms of Swiss francs for each category. This monthly advance of pay may be modified by special agreement between the Parties to the conflict.

## 2. Past US Practices

War Department regulations which governed the treatment of prisoners of war during World War II required that each officer prisoner be credited with a monthly allowance. This allowance for the various grades of German, Italian and Japanese officers was as follows:

Equivalent grades in the United States		Monthly Allowance	
Army	Navy	German Italian	Japanese
General	Admiral	\$40.00	\$128.91
Lieutenant General	Vice Admiral	40.00	113.29
Major General	Rear Admiral	40.00	97.66
Brigadier General	Commodore	40.00	
Colonel	Captain	40.00	81.06
Lieutenant Colonel	Commander	40.00	62.90



(CONT'D)

Equivalent grades in the United States		Monthly Allowance	
Army	Navy	German Italian	Japanese
Major	Lieutenant Commander	\$40.00	\$ 45.51
Captain	Lieutenant	30.00	40.43
First Lieutenant	Lieutenant (jg)	20.00	28.00
Second Lieutenant	Ensign	20.00	25.00

The United States Government proposed to the German and Italian Governments, on a reciprocal basis, that officer prisoners be granted monthly allowances in accordance with the above schedule. No acceptance of this proposal was ever received from the German Government. A counter-proposal made by the Italian Government was being considered by the United States at the time of the capitulation of Italy. Nevertheless, German and Italian Officers while in the custody of the United States, receiving monthly allowances in accordance with the amounts which had been proposed.

In reply to a somewhat similar proposal the Japanese Government stated that it was paying American officer prisoners of war the same salary as corresponding ranks in the Japanese army and that the Japanese Government desired that Japanese prisoners of war in our custody receive the same salary as paid to officers in the Japanese army. The United States accepted the Japanese offer to pay American officer prisoners in Japanese custody the same salary as officers of equivalent rank in the Japanese armed forces with the understanding that both Governments would deduct the cost of food and clothing from the salaries paid to officer prisoners of war.

Enlisted prisoners of war, whether or not employed for pay, were paid a monthly allowance of three dollars (\$3.00) by the United States. This allowance was not fixed by any treaty obligation, but was in the nature of a voluntary grant by our Government to enable prisoners to have an allowance with which to buy tobacco and other small items of convenience. (TM 19-500, Chap 4, Par 6,8)

### 3. Drafting History

Under the 1929 Convention, pay was given only to officers; it has now been extended to all prisoners in order to cover those who, not being able to work, do not earn anything. The amount of pay has been fixed for the various ranks, which have, for this purpose, been divided into five categories, and it has been called an "advance of pay" to show that the amount is a part only of the amount paid to them in their army. In order to decide in advance the pay due to prisoners of the different categories, it was found necessary in the preparatory work for the Conference, to break with the complicated system adopted in 1929 and to adopt a fixed basis, the Swiss franc.



The choice of the "Swiss franc", as opposed to the "gold Swiss franc", for establishing a fixed basis for stipulating the amount of the advance pay provoked much discussion. The Stockholm text used and the Committee, in a close vote, favored the gold Swiss franc as a basis. However, in the General Assembly, it was pointed out that there was a tendency at present to abandon gold as a monetary standard and also that, in time of war, both belligerents fix an arbitrary price for gold so that the system proposed under this Article could not function normally. These objections prevailed and, by a majority vote, the General Assembly adopted the Swiss franc as the basis for determining the advance pay of prisoners of war.

Several of the Delegations expressed concern with regard to the rates of advance pay. It was pointed out that several of the soft currency countries, where the cost of living is low, would find great difficulty in paying the advance stipulated in the first paragraph, and that prisoners of war in such countries might be placed in a much more favorable position than the soldiers of the Detaining Power. The Committee considered that these objections were justified and in the third and fourth paragraphs adopted a system which would enable such countries to avoid the embarrassment referred to and to come to an agreement concerning the amount of pay which should be advanced with the Power on which the prisoners depended.

ARTICLE 61

SUBSTANCE

Provides that the Power on which the prisoners depend may trans-  
mit sums of money as supplementary pay provided that the amount is  
the same for each prisoner in a particular category.

PRESENT TEXT

"The Detaining Power shall accept for distribution as supplementary pay to prisoners of war sums which the Power on which the prisoners depend may forward to them, on condition that the sums to be paid shall be the same for each prisoner of the same category, shall be payable to all prisoners of that category depending on that Power, and shall be placed in their separate accounts, at the earliest opportunity, in accordance with the provisions of Article 64. Such supplementary pay shall not relieve the Detaining Power of any obligation under this Convention."

PREVIOUS TEXT

None.

BACKGROUND

This Article was drawn up to provide an additional source from which prisoners may receive enough money to meet current needs, including their everyday wants.

ARTICLE 62SUBSTANCE

Requires that prisoners shall be paid a fair working rate of pay to be fixed by the Detaining Power but not to be less than one-fourth of one Swiss franc (\$.06) per working day, and further that the Power on which the prisoner depends be informed of the working rate of pay established. Provides that prisoners assigned to permanent duties or skilled work in connection with the operation of the camp, as well as retained personnel and prisoners representatives, shall receive working pay.

PRESENT TEXT

"Prisoners of war shall be paid a fair working rate of pay by the detaining authorities direct. The rate shall be fixed by the said authorities, but shall at no time be less than one-fourth of one Swiss franc for a full working day. The Detaining Power shall inform prisoners of war, as well as the Power on which they depend, through the intermediary of the Protecting Power, of the rate of daily working pay that it has fixed.

"Working pay shall likewise be paid by the detaining authorities to prisoners of war permanently detailed to duties or to a skilled or semi-skilled occupation in connection with the administration, installation or maintenance of camps, and to the prisoners who are required to carry out spiritual or medical duties on behalf of their comrades.

"The working pay of the prisoners' representative, of his advisers, if any, and of his assistants, shall be paid out of the fund maintained by canteen profits. The scale of this working pay shall be fixed by the prisoners' representative and approved by the camp commander. If there is no such fund, the detaining authorities shall pay these prisoners a fair working rate of pay."

PREVIOUS TEXT

## Article 34, GPW 1929

"Prisoners of war shall not receive wages for work connected with the administration, management and maintenance of the camps."

"These agreements shall also specify the part which the camp administration may retain, the amount which shall belong to the prisoner of war and the manner in which that amount shall be put at his disposal during the period of his captivity.

"While awaiting the conclusion of the said agreements, payment for labor of prisoners shall be settled according to the rules given below:

a) Work done for the State shall be paid for in accordance with the rates in force for soldiers of the national army doing the same work, or, if none exists, according to a rate in harmony with the work performed.

b) When the work is done for the account of other public administrations or for private persons, conditions shall be regulated by agreement with the military authority."

#### Article 44, GPW 1929

"When the agents are employed as laborers, their activity as representatives of prisoners of war must be counted in the compulsory period of labor."

#### BACKGROUND

##### 1. Substantive Changes

The 1929 Convention specified that prisoners would not receive wages for work connected with the administration, management and maintenance of prisoner of war camps. The 1949 Convention now requires that prisoners permanently detailed to duties or to a skilled or semi-skilled occupation in connection with the administration, installation or maintenance receive pay.

Both Conventions provide that the daily working rate of pay for prisoners shall be fixed by the Parties to the Conflict. The 1929 Convention required that, pending the reaching of an agreement, work done for the State should be paid in accordance with the rates in force for the soldiers of the Army of the Detaining Power doing the same work. The 1949 Convention requires only that prisoners shall always receive a minimum daily rate of pay of one-fourth of one Swiss franc (\$.06) for each day of work.

Under the 1929 Convention the working pay of the prisoners' representatives and their advisers was paid by the Detaining Power. Under the 1929 Convention, such payments may be made from the fund maintained from prisoner of war canteen profits. Only if there is no such fund must the Detaining Power make such payments from its own funds.

##### 2. Past U. S. Practices

For work, other than that connected with the administration, installation and maintenance of the camps, prisoners received a daily working rate of pay of \$.80. The United States continued this rate of pay even after attempts to get Germany, Italy and Japan to pay an equivalent amount to American prisoners in their custody ended in failure.

### 3. Drafting History

The present Article represents a departure from the 1929 Convention as regards ordinary pay. First, as it is not a question, properly speaking, of a wage or salary on which a prisoner has to live, the term "working pay" has been introduced. Further, the rather impractical standards in the 1929 Convention for fixing pay have been dropped; the Detaining Power itself shall fix the amounts of working pay but may not go below a minimum which has been likewise fixed in terms of the Swiss franc. Finally, no matter whether prisoners work for private or public employers, the Detaining Power is itself responsible and, contrary to the rule adopted in 1929, is responsible also for the working pay of prisoners assigned permanently in the capacity of artisans or clerks to the administration or management of camps. Certain delegations wished to distinguish, in dealing with such personnel, between work which benefitted the Detaining Power mainly and work which was principally to the advantage of the prisoners themselves; they considered the latter should be paid partly from the profits of canteens. The Committee decided in the end against making this distinction, considering that only the prisoners' representative and his assistants should, in order to guarantee their independence, be paid from this source.



# ARTICLE 63

## SUBSTANCE

Permits prisoners to receive remittances of money and establishes a procedure whereby, subject to restrictions fixed by the Detaining Power, prisoners may have payments made in their own country. Such payments are debited to the prisoner's individual account and the sums thus debited placed to the credit of the Power on which the prisoner depends.

## PRESENT TEXT

"Prisoners of war shall be permitted to receive remittances of money addressed to them individually or collectively.

"Every prisoner of war shall have at his disposal the credit balance of his account as provided for in the following Article, within the limits fixed by the Detaining Power, which shall make such payments as are requested. Subject to financial or monetary restrictions which the Detaining Power regards as essential, prisoners of war may also have payments made abroad. In this case payments addressed by prisoners of war to dependents shall be given priority.

"In any event, and subject to the consent of the Power on which they depend, prisoners may have payments made in their own country, as follows: the Detaining Power shall send to the aforesaid Power through the Protecting Power, a notification giving all the necessary particulars concerning the prisoners of war, the beneficiaries of the payments, and the amount of the sums to be paid, expressed in the Detaining Power's currency. The said notification shall be signed by the prisoners and countersigned by the camp commander. The Detaining Power shall debit the prisoners' account by a corresponding amount; the sums thus debited shall be placed by it to the credit of the Power on which the prisoners depend.

"To apply the foregoing provisions, the Detaining Power may usefully consult the Model Regulations in Annex V of the present Convention."

## PREVIOUS TEXT

Article 24, GPW, 1929

"During their imprisonment, facilities shall be granted them for the transfer of these amounts, in whole or in part, to banks or private persons in their country of origin."

## BACKGROUND

1. Substantive Changes

The 1929 Convention required that prisoners be enabled to transfer funds from their accounts to persons or banks in the country of their origin. The 1949 Convention retains this provision and enlarges on it by outlining a procedure to be followed for effecting payments or transfers of credits to their own country. In addition, the 1949 Convention permits prisoners to receive remittances of money and, within limits fixed by the Detaining Power, to use the funds he has available to make purchases.

## 2. Past US Practices

In May of 1944, the Treasury Department authorized Italian prisoners of war to withdraw from their trust fund accounts for the purpose of making remittances to Italy for the support of their families. The amount that could be withdrawn by any prisoner was limited by War Department regulations to \$100.00 in any one quarter. The license to make remittances for Italian prisoners was granted to the Provost Marshal General. Initially, remittances to Italy were made through the American Express Company whose handling charges amounted to \$1.50 per individual remittance. In October, 1944, arrangements were made with the National City Bank of New York for the handling of these remittances for a charge of 25 cents per remittance.

No channels were established for remittances by German prisoners similar to those arranged for Italians as conditions in Germany were not conducive to doing so prior to V-E Day or at an early date thereafter.

Under War Department regulations governing the treatment of prisoners of war during World War II, individual prisoners were permitted to withdraw from their trust fund accounts an amount not to exceed \$30.00 in any one month for the purpose of paying for goods or services purchased from civilian sources.

## 3. Drafting History

The words "or collectively" were added to the Stockholm draft of this paragraph because it was considered that cash remittances or gifts intended for the whole body of prisoners in one camp could quite well be paid into the fund provided for in Article 28. Considering that there was no need in this case to contemplate, as in the case of relief consignments, the possibility of any limitation, it was decided to delete the words in the Stockholm text "subject to the restrictions that the Protecting Power concerned may suggest to impose on these remittances, in the interest of the prisoners themselves."

Payments which are made to the prisoners' country of origin do not involve any actual transfer of funds, any adjustment being a matter of Post-War settlement.

POSSIBLE QUESTIONS

1. Q - Do payments made by prisoners under the provisions of this Article involve the transmittal of actual funds by the Detaining Power to the country in which the payment is being made?

A - No. As contemplated by this Article payments would be made by prisoners only to the country on which they depend. The Detaining Power would merely debit the prisoner's account for the amount of his payment and credit the Power on which he depended for a like amount. A final financial settlement between the Powers concerned would then be effected at the end of hostilities in accordance with Article 63.

ARTICLES 64 and 65

SUBSTANCE

Individual accounts shall be maintained for each prisoner. Prisoners shall have reasonable access to their accounts and, in the case of international transfers shall be given certificates for money remaining to their accounts.

PRESENT TEXT

Article 64

"The Detaining Power shall hold an account for each prisoner of war, showing at least the following:

- (1) The amounts due to the prisoner or received by him as advances of pay, as working pay or derived from any other source; the sums in the currency of the Detaining Power which were taken from him; the sums taken from him and converted at his request into the currency of the said Power.
- (2) The payments made to the prisoner in cash, or in any other similar form; the payments made on his behalf and at his request; the sums transferred under Article 63, third paragraph."

Article 65

"Every item entered in the account of a prisoner of war shall be countersigned or initialled by him, or by the prisoners' representative acting on his behalf.

"Prisoners of war shall at all times be afforded reasonable facilities for consulting and obtaining copies of their accounts, which may likewise be inspected by the representatives of the Protecting Powers at the time of visits to the camp.

"When prisoners of war are transferred from one camp to another, their personal accounts will follow them. In case of transfer from one Detaining Power to another, the monies which are their property and are not in the currency of the Detaining Power will follow them. They shall be given certificates for any other monies standing to the credit of their accounts.

"The Parties to the conflict concerned may agree to notify to each other at specific intervals through the Protecting Power, the amount of the accounts of the prisoners of war."

PREVIOUS TEXTS

Article 64 is new.

Article 65 replaces Article 26, GPW 1929, as follows:

"Money deposited to the account of transferred prisoners shall be transmitted to the competent authority of their new place of residence."

BACKGROUND

Substantive Changes

Where the 1929 Convention confined itself to a reference to prisoners' accounts, the 1949 Convention, in the present Articles, adopts a system of close control and gives both prisoners and the Protecting Power the possibility of checking the accounts regularly.



## ARTICLE 66

SUBSTANCE

Requires that, on termination of captivity, each prisoner be furnished with a statement of the balance remaining to the credit of his account. Responsibility for settlement of credit balances due prisoners on termination of their captivity is imposed on the Power on which the prisoner depends.

PRESENT TEXT

"On the termination of Captivity, through the release of a prisoner of war or his repatriation, the Detaining Power shall give him a statement, signed by an authorized officer of that Power, showing the credit balance then due to him. The Detaining Power shall also send through the Protecting Power to the government upon which the prisoner of war depends, lists giving all appropriate particulars to all prisoners of war whose captivity has been terminated by repatriation, release, escape, death or any other means, and showing the amount of their credit balances. Such lists shall be certified on each sheet by an authorized representative of the Detaining Power.

"Any of the above provisions of this Article may be varied by mutual agreement between any two Parties to the conflict.

"The Power on which the prisoner of war depends shall be responsible for settling with him any credit balance due to him from the Detaining Power on the termination of his captivity."

PREVIOUS TEXTS

## Article 24, GPW, 1929

"Pay to the credit of their accounts shall be given to prisoners of war at the end of their captivity."

## Article 34, GPW, 1929

"The pay remaining to the credit of the prisoner shall be delivered to him at the end of captivity. In case of death, it shall be forwarded through the diplomatic channel to the heirs of the deceased."

BACKGROUND

## 1. Substantive Changes or Additions to 1929 POW Convention

The 1929 Convention required that the pay remaining to the credit of a prisoner's account at the end of his captivity must be given to him by the Detaining Power. The 1949 Convention merely requires that the Detaining Power furnish the prisoner with a

statement showing his remaining credit balance. The Power on which the prisoner depends is then responsible for settling with him any credit balance due to him.

## 2. Past US Practices

Prisoners of war, upon being repatriated after World War II, were furnished certificates of credit balance which reflected the amount of money remaining to the credit of their respective accounts at the time of their repatriation (paragraphs 27 and 28, Ch. 4, TM 19-500). These certificates were subsequently redeemed by the United States in the currency of the Power upon which the prisoner depended.

## 3. Drafting History

After much discussion a majority of the Committee, which considered this Article at Geneva, eventually decided to depart from the 1929 rule which obliged the Detaining Power to pay to prisoners in cash, the credit balance of their account. It was felt that payment of this sort might cause difficulty for prisoners, especially in cases where there is official control of the import and export of foreign currency, and that, further, it would give rise to a certain traffic in currency in their home countries. For the future, a certificate showing the amount of their credit balance shall be given to them and a duplicate sent to the Power of origin which shall be responsible for payment to the repatriated prisoners of the sums shown on the certificates. Nevertheless, several Delegations would have preferred a stipulation to the effect that the two Powers concerned were jointly responsible for the equitable payment of the credit balances, since a part of the balances came from the working pay due to the prisoner by the Detaining Power.

## ARTICLE 67

SUBSTANCE

Provides that the settlement of monthly advances of pay made to prisoners in accordance with Article 60 as well as payments made by the Power on which the prisoner depends under the provisions of Articles 63 and 68 shall be the subject of separate arrangements between the Powers concerned at the close of hostilities.

PRESENT TEXT

"Advances of pay, issued to prisoners of war in conformity with Article 60, shall be considered as made on behalf of the Power on which they depend. Such advances of pay, as well as all payments made by the said Power under Article 63, third paragraph, and Article 68, shall form the subject of arrangements between the Powers concerned, at the close of hostilities."

PREVIOUS TEXTS

None.

BACKGROUND

1. Substantive additions or changes to 1929 POW Convention

The logical consequence of the system adopted in Articles 60, 63 and 68 for dealing with financial resources of prisoners is expressed in the present new Article which provides that the settlement of any adjustments between the Powers concerned shall take place at the end of hostilities, each being called upon to make payments for the other's account.

2. Past US Practices

See Section 2 under Article 66.

## ARTICLE 68

SUBSTANCE

Provides that claims by prisoners, for injuries arising out of work performed and for property not restored on termination of captivity, shall be made to the government on which the prisoner depends. Detaining Power must furnish prisoners with requisite statements necessary to support such claims.

PRESENT TEXT

"Any claim by a prisoner of war for compensation in respect of any injury or other disability arising out of work shall be referred to the Power on which he depends, through the Protecting Power. In accordance with Article 54, the Detaining Power will, in all cases, provide the prisoner of war concerned with a statement showing the nature of the injury or disability, the circumstances in which it arose and particulars of medical or hospital treatment given for it. This statement will be signed by a responsible officer of the Detaining Power and the medical particulars certified by a medical officer.

"Any claim by a prisoner of war for compensation in respect of personal effects monies or valuables impounded by the Detaining Power under Article 18 and not forthcoming on his repatriation, or in respect of loss alleged to be due to the fault of the Detaining Power or any of its servants, shall likewise be referred to the Power on which he depends. Nevertheless, any such personal effects required for use by the prisoners of war whilst in captivity shall be replaced at the expense of the Detaining Power. The Detaining Power will, in all cases, provide the prisoner of war with a statement, signed by a responsible officer, showing all available information regarding the reasons why such effects, monies or valuables have not been restored to him. A copy of this statement will be forwarded to the Power on which he depends through the Central Prisoners of War Agency provided for in Article 123."

PREVIOUS TEXTS

None.

BACKGROUND

## 1. Substantive Changes

This Article, which is new, confirms in a more general form, especially by extending it to cover the loss of property of the prisoner

which has been confiscated, a principle already found in Article 54, namely that it is the Power on which the prisoners depend which must satisfy their claims for compensation for accidents sustained during work.

## 2. Past US Practices

War Department regulations which governed the treatment of prisoners of war during World War II provided for compensation pay at the rate of forty (\$.40) cents per day for not to exceed six days per week for the period of time a prisoner of war was prevented from working due to an injury arising out of and in the course of labor assigned to him. Settlement of property claims submitted by prisoners who were held in United States custody during World War II have been and are continuing to be effected.



POSSIBLE QUESTIONS

Q - In forward areas, would not the issuance of large numbers of receipts for property taken from prisoners be administratively impractical?

A - Yes. However, normally, only documents of intelligence value and weapons are taken from prisoners prior to their arrival at a camp in the rear areas. Weapons are military property and need not be receipted for. Only to the extent that the prisoner possessed personal papers which were taken from him for intelligence purposes would it be necessary to issue receipts.

(See Article 54)

# ARTICLE 69

## SUBSTANCE

Requires that the prisoners of war and the Power on which they depend be informed of regulations and any alterations thereto governing their relations with the outside world.

## PRESENT TEXT

"Immediately upon prisoners of war falling into its power, the Detaining Power shall inform them and the Powers on which they depend, through the Protecting Power, of the measures taken to carry out the provisions of the present Section. They shall likewise inform the parties concerned of any subsequent modifications of such measures."

## PREVIOUS TEXT

### Article 35 GPW 1929

"Upon the outbreak of hostilities, belligerents shall publish the measures provided for the execution of the provisions of this section."

## BACKGROUND

### 1. Substantive Changes

The text of the present Article completes and clarifies the terminology of the 1929 Convention by stipulation that the measures laid down for the implementating of the provisions governing the relations of prisoners of war with the exterior, as also every alteration to these measures, shall be brought to the knowledge of the prisoners of war and of the Power on which they depend, by the Protecting Power.

### 2. Past US Practices

War Department regulations which governed the treatment of prisoners of war during World War II required that the prisoners of war be informed of the provisions of those regulations which concerned education, recreation, visits, religion, discipline, military courtesy, letters and cards, special message forms, cables, telegrams and telephone calls, parcels, books, newspapers and magazines, complaints, and requests. The camp commander in his discretion, was authorized to inform prisoners of such other provisions of pertinent War Department regulations as he believed should be conveyed to the prisoners. (TM 19-500, Chap. 1 Par. 1.)

## ARTICLE 70

SUBSTANCE

Requires that prisoners be permitted, within not more than one week after arrival at a camp to write to his family and to the Central Prisoners of War Agency.

PRESENT TEXT

"Immediately upon capture, or not more than one week after arrival at a camp, even if it is a transit camp, likewise in case of sickness or transfer to hospital or to another camp, every prisoner of war shall be enabled to write direct to his family, on the one hand, and to the Central Prisoners of War Agency provided for in Article 123, on the other hand, a card similar, if possible, to the model annexed to the present Convention, informing his relatives of his capture, address and state of health. The said cards shall be forwarded as rapidly as possible and may not be delayed in any manner."

PREVIOUS TEXTSArticle 8 GPW 1929

"As soon as possible, every prisoner must be enabled to correspond with his family himself, under the conditions provided in Articles 36 et seq."

Article 36 GPW 1929

"Within a period of not more than one week after his arrival at the camp, and likewise in case of sickness, every prisoner shall be enabled to write his family a postal card informing it of his capture and of the state of his health. The said postal cards shall be forwarded as rapidly as possible and may not be delayed in any manner."

BACKGROUND

## 1. Substantive Changes

The 1949 Convention adds the requirement that prisoners be permitted to write to the Central Prisoners of War Agency.

## 2. Past US Practices

War Department regulations which governed the treatment of prisoners of war during World War II were in substantial accord with the provisions of the present Article. Within a period of not more

than one week after arrival at the first prisoner of war camp and in the event of sickness or transfer from one base camp to another, or to a general hospital, a prisoner was permitted to dispatch a card to his home address and to the International Committee of the Red Cross. Blank spaces were provided on the cards in which the prisoner could write the date of his capture, state of health and mailing address. (TM 19-500, 1944, Chap. 2, Pars. 73 and 81.)

### 3. Drafting History

Experience in the last war had shown that it was very difficult to register prisoners when a great number were taken at the same time. That was why Article 70 included a provision to the effect that a capture card was to be forwarded to the Central Prisoners of War Agency by the prisoner, in addition to the card sent to his family. The card would remain in the files of the Central Agency, where all the information would be available when inquiries were made. A model capture card is annexed to the Conventions.

At Geneva an amendment was submitted whereby the word "Nationality" which appeared on the model capture card annexed to the Stockholm draft would be deleted and the words "Power on which the prisoner depends" substituted therefor. The reasons given for the proposed change were as follows: (a) If another war like the last one occurred, many people would be anxious to conceal their nationality from the capturing Power. (b) Nationality was no indication of the Power responsible for the persons captured. The amendment was adopted.

## ARTICLE 71

SUBSTANCE

Permits prisoners to send a minimum of two letters and four cards monthly. Provides that prisoners, without news for a long period of time, may send telegrams at their own expense.

PRESENT TEXT

"Prisoners of war shall be allowed to send and receive letters and cards. If the Detaining Power deems it necessary to limit the number of letters and cards sent by each prisoner of war, the said number shall not be less than two letters and four cards monthly, exclusive of the capture cards provided for in Article 70, and conforming as closely as possible to the models annexed to the present Convention. Further limitations may be imposed only if the Protecting Power is satisfied that it would be in the interests of the prisoners of war concerned to do so owing to difficulties of translation caused by the Detaining Power's inability to find sufficient qualified linguists to carry out the necessary censorship. If limitations must be placed on the correspondence addressed to prisoners of war, they may be ordered only by the Power on which the prisoners depend, possibly at the request of the Detaining Power. Such letters and cards must be conveyed by the most rapid method at the disposal of the Detaining Power; they may not be delayed or retained for disciplinary reasons.

"Prisoners of war who have been without news for a long period, or who are unable to receive news from their next of kin or to give them news by the ordinary postal route, as well as those who are at a great distance from their homes, shall be permitted to send telegrams, the fees being charged against the prisoners of war's accounts with the Detaining Power or paid in the currency at their disposal. They shall likewise benefit by this measure in cases of urgency.

"As a general rule, the correspondence of prisoners of war shall be written in their native language. The Parties to the conflict may allow correspondence in other languages.

"Sacks containing prisoner of war mail must be securely sealed and labelled so as clearly to indicate their contents, and must be addressed to offices of destination."

PREVIOUS TEXTSArticle 36 GPW 1929

"Each of the belligerents shall periodically determine the number of letters and postal cards per month which prisoners of war of the various classes shall be allowed to send, and shall



inform the other belligerents of this number. These letters and cards shall be transmitted by post by the shortest route. They may not be delayed or retained for disciplinary reasons.

"As a general rule, correspondence of prisoners shall be written in their native language. Belligerents may allow correspondence in other languages."

#### Article 38 GPW 1929

"Prisoners may, in case of acknowledged urgency, be allowed to send telegrams paying the usual charges."

#### BACKGROUND

##### 1. Substantive Changes

The 1929 Convention required only that the belligerents determine periodically the number of letters and post cards that prisoners could send and provided that, in cases of acknowledged urgency, prisoners would be permitted to send telegrams. The 1929 Convention was silent with respect to correspondence addressed to prisoners. The 1949 Convention provides that the Detaining Power may not limit the number of letters and cards sent by prisoners to less than two letters and four cards each month. Further limitation on this minimum number of letters and cards may be imposed only by the Protecting power when deemed to be in the best interests of the prisoners, as, for example, when sufficient qualified translators are not available. It is also provided that restrictions on correspondence addressed to prisoners of war may be imposed only by the Power on which the prisoner depends.

##### 2. Past U. S. Practices

War Department regulations which governed the treatment of prisoners of war during World War II were in general conformity with the provisions of the present Article. There were no restrictions on the number of letters or cards that a prisoner was permitted to receive. Each enlisted prisoner was permitted to send two letters and four cards each month. Also, each prisoner was permitted to send one prepaid cable during his internment. In the event of an emergency, particularly death or serious illness, the dispatch of additional cables or telegrams was permitted at the discretion of the camp commander. (TM 19-500, Chap 2, Par. 75, 76, and 88)

##### 3. Drafting History

Article 71, which deals with correspondence, attempts to remedy the difficulties arising from the slowness in forwarding prisoners of war correspondence and from the congestion of the censorship service. To reduce the time of forwarding, the first paragraph of

Article 71 provides that prisoners of war correspondence shall be forwarded "by the most rapid means available to the Detaining Power." Article 71 stipulates that the Detaining Power may limit the number of letters and cards which prisoners may write each month, a limitation which, however, cannot normally restrict the number of less than two letters and four cards. Such limitation was not provided for in the 1929 Convention. Nevertheless, taking into account the observations made in meetings, the Committee accepted an amendment authorizing the Detaining Power, on an intervention of the Protecting Power in the prisoner's own interests, to still further restrict the correspondence if it cannot find enough qualified translators to cope with the problem of censorship. Article 71 made another innovation, again in order to expedite censorship, by limiting also the correspondence which may be addressed to prisoners of war. Nevertheless, in order to eliminate the risk of abuse by the Detaining Power, such restrictions shall be put into force only by the Power on which the prisoners depend.

Lastly, a new paragraph extends the number of cases in which prisoners of war may send telegrams.

A suggestion to introduce standard telegram forms in an Annex to the Convention, with a view to a reduction of charges, was not adopted by the Committee.

ARTICLE 71

POSSIBLE QUESTIONS

Q - Would not the absence of a limit on the number of letters which a prisoner is permitted to receive place an impossible censorship task on the Detaining Power?

A - Yes, it might. However, both parties to the conflict would be faced with the same problem and, therefore, it would be to their mutual advantage to impose a reasonable limitation on the number of letters which each side would permit to be sent to each prisoner each month.

ARTICLE 72

SUBSTANCE

Permits sending of individual parcels and collective shipments of food, medical supplies, books, etc., to prisoners. Such shipments may be limited only by the Protecting Power or the body responsible for the forwarding of such shipments.

PRESENT TEXT

"Prisoners of war shall be allowed to receive by post or by any other means individual parcels or collective shipments containing, in particular, foodstuffs, clothing, medical supplies and articles of a religious, educational or recreational character which may meet their needs, including books, devotional articles, scientific equipment, examination papers, musical instruments, sports outfits and materials allowing prisoners of war to pursue their studies or their cultural activities.

"Such shipments shall in no way free the Detaining Power from the obligations imposed upon it by virtue of the present Convention.

"The only limits which may be placed on these shipments shall be those proposed by the Protecting Power in the interest of the prisoners themselves, or by the International Committee of the Red Cross or any other organization giving assistance to the prisoners in respect of their own shipments only, on account of exceptional strain on transport or communications.

"The conditions for the sending of individual parcels and collective relief shall, if necessary, be the subject of special agreements between the Powers concerned, which may in no case delay the receipt by the prisoners of relief supplies. Books may not be included in parcels of clothing and foodstuffs. Medical supplies shall, as a rule, be sent in collective parcels."

PREVIOUS TEXT

Article 37 GPW 1929

"Prisoners of war shall be allowed individually to receive parcels by mail, containing foods and other articles intended to supply them with food or clothing. Packages shall be delivered to the addresses and a receipt given."



Article 39 GPW 1929

"Prisoners of war shall be allowed to receive shipments of books individually, which may be subject to censorship.

"Representatives of the Protecting Powers and duly recognized and authorized aid societies may send books and collections of books to the libraries of prisoners' camps. The transmission of these shipments to libraries may not be delayed under the pretext of censorship difficulties."

BACKGROUND

### 1. Substantive Changes

The 1949 Convention adds to the type of supplies that prisoners may receive individual parcels or collective shipments of medical supplies, musical instruments, sports outfits and materials allowing them to pursue their studies. Limits on such shipments may be imposed only by the Protecting Power or by the body responsible for the forwarding of the shipments. It is also expressly provided that relief shipments shall not relieve the Detaining Power of its obligations towards prisoners.

### 2. Past U. S. Practices

War Department regulations which governed the treatment of prisoners of war during World War II were in substantial accord with the provisions of the present Article. Prisoners were permitted to receive parcels from overseas. With the exception of new books, they were not permitted to receive parcels mailed within the continental limits of the United States other than from relief or aid organizations and American educational institutions approved by The Provost Marshal General. All parcels, particularly those from overseas, were subject to careful examination before delivery to the prisoner addressees but no restrictions were placed on items that might be sent to them. (TM 19-500, Chap. 2, Para. 94)

Moreover, in order to eliminate the risk of any arbitrary action by the Detaining Power, Article 72 stipulates that the only limits which may be placed on these shipments shall be those which are proposed in the interests of the prisoners themselves by the Protecting Power or by the body responsible for the forwarding of such shipments.



## ARTICLE 73

SUBSTANCE

Regulates conditions governing the reception and distribution of relief shipments at the prisoner of war camps.

PRESENT TEXT

"In the absence of special agreements between the Powers concerned on the conditions for the receipt and distribution of collective relief shipments, the rules and regulations concerning collective shipments, which are annexed to the present Convention, shall be applied.

"The special agreements referred to above shall in no case restrict the right of prisoners' representatives to take possession of collective relief shipments intended for prisoners of war, to proceed to their distribution or to dispose of them in the interest of the prisoners.

"Nor shall such agreements restrict the right of representatives of the Protecting Power, the International Committee of the Red Cross or any other organization giving assistance to prisoners of war and responsible for the forwarding of collective shipments, to supervise their distribution to the recipients."

PREVIOUS TEXTArticle 43 GPW 1929

"The agents shall be entrusted with the reception and distribution of collective shipments. \* \* \*"

BACKGROUND

## 1. Substantive Changes

The new Convention takes account of the need for spelling out detailed rules concerning collective relief shipments by providing:

a. That they may be the subject of special agreements between the belligerents, which agreements must not, however, restrict the right of prisoners' representatives to take possession of and effect distribution of such shipments or the right of the Protecting Power or organization making the shipments to supervise their distribution.

b. That, in the absence of such an agreement, the rules and regulations annexed to the Convention (Annex III) are to apply.

## 2. Past US Practices

War Department regulations which governed the treatment of prisoners of war during World War II provided that items loaned or donated to prisoners of war by recognized relief agencies and

charitable organizations would be receipted and accounted for by the prisoners' representatives. Duly accredited representatives of the Protecting Power, International Committee of the Red Cross and other approved welfare agencies were permitted to visit the prisoner of war camps at times previously approved by The Provost Marshall General, but the regulations were silent with respect to supervision of the distribution of relief supplies by the sending organization. (TM 19-500, Chap. 2, Par. 50.)

### 3. Drafting History

In view of the importance of collective relief shipments, it was considered desirable to provide for the conditions of their reception and distribution in a separate Article which would make the practical details of receiving and allocating relief shipments the subject of special agreements between the Parties to the Conflict. Nevertheless, it was felt that these agreements must not be allowed to cancel the principles which it seemed essential to establish concerning the distribution of relief parcels by the prisoners' representative and the supervision which the Protecting Power or the body responsible for the forwarding of the relief shipments has the right to exercise over their distribution. In the absence of an agreement between the Parties concerned, the model agreement annexed to the Convention (Annex III) would apply.

This model agreement was based chiefly on the experience of the Second World War. It is mainly intended to ensure that the prisoners' representative has every facility to make distributions. The prisoners' representative shall not, however, be completely free in the matter, as the agreement also provides that reserves of parcels may be set aside, in order to meet sudden emergencies.

POSSIBLE QUESTIONS

Q - This Article requires that the prisoners' representatives be permitted to take possession of, and to distribute relief supplies to the prisoners. Might not this requirement enable such representatives to exercise a strong and possibly undesirable influence over the actions of the prisoners whom they represent?

A - Yes, conceivably this might happen. There are steps, however, which the camp commander could take in this regard. Since the intent of the Convention in placing relief shipments under the control of the prisoners' representatives, is to assure equitable and just distribution of such supplies, the camp commander would be justified in removing an individual from the position of prisoners' representative should he fail to discharge his responsibilities properly. (See Article 79 dealing with approval by the Detaining Power of such appointments and Article 81 regarding dismissal.) Also, closer participation by representatives of the Protecting Power or organization responsible for forwarding the collective shipments might be required with regard to the actual distribution of the supplies.

## ARTICLE 74

SUBSTANCE

Provides that relief shipments, correspondence and remittances of money to or from prisoners of war shall be exempt from import, customs and other dues. Within their respective territories, the cost of transporting relief shipments shall be borne by the Powers through whose territory shipment is effected. Specifies that rates charged for telegrams sent to or received by prisoners are to be reduced as much as possible.

PRESENT TEXT

"All relief shipments for prisoners of war shall be exempt from import, customs and other dues.

"Correspondence, relief shipments and authorized remittances of money addressed to prisoners of war or despatched by them through the post office, either direct or through the Information Bureaus provided for in Article 122 and the Central Prisoners of War Agency provided for in Article 123, shall be exempt from any postal dues, both in the countries of origin and destination, and in intermediate countries.

"If relief shipments intended for prisoners of war cannot be sent through the post office by reason of weight or for any other cause, the cost of transportation shall be borne by the Detaining Power in all the territories under its control. The other Powers party to the Convention shall bear the cost of transport in their respective territories.

"In the absence of special agreements between the Parties concerned, the costs connected with transport of such shipments, other than costs covered by the above exemption, shall be charged to the senders.

"The High Contracting Parties shall endeavour to reduce, so far as possible, the rates charged for telegrams sent by prisoners of war, or addressed to them."

PREVIOUS TEXTS

## Article 38, GPW, 1929

"Letters and consignments of money or valuables as well as parcels by post intended for prisoners of war or dispatched by them, either directly or by the mediation of the information bureaus provided for in Article 77, shall be exempt from all postal duties in the countries of origin and destination, as well as in the countries they pass through.

"Presents and relief in kind for prisoners shall be likewise exempt from all import and other duties, as well as of payments for carriage by the State railways."



## Article 16, Hague Regulations

"Inquiry offices enjoy the privilege of free postage. Letters, money orders, and valuables, as well as parcels by post, intended for prisoners of war, or dispatched by them, shall be exempt from all postal duties in the countries of origin and destination, as well as in the countries they pass through.

"Presents and relief in kind for prisoners of war shall be admitted free of all import or other duties, as well as of payments for carriage by the state railways."

BACKGROUND

## 1. Substantive Changes

Both Conventions provide that relief shipments to prisoners shall be free from import, customs and other dues and further that such relief shipments and correspondence addressed to prisoners of war or dispatched by them shall be exempt from all postal dues. The 1949 Convention adds a new provision, that the cost of transportation of relief shipments which cannot be sent through the post office by reason of weight or for any other cause shall be borne by the Detaining Power and by other Parties to the Convention within their respective territories. It also specifies that rates charged for telegrams sent to or received by prisoners of war shall be reduced as much as possible.

## 2. Past U. S. Practices

War Department regulations governing the treatment of prisoners of war during World War II were in accord with the provisions of the present Article. Letters and cards to or from prisoners of war were transmitted through the United States mail postage free, as also were parcels which did not exceed four pounds in weight. There was no reduction of rate for telegrams dispatched by prisoners. Shipping charges, within the United States, on property loaned or donated to prisoners of war were paid from the camp prisoner of war fund. (TM 19-500, 1944 Chap. 2, par. 84, par. 2 and 13.3)

## 3. Diplomatic Conference at Geneva

This Article contains two new provisions which have no counterpart in the 1929 Convention. First, relief shipments for prisoners shall enjoy free transportation in all territory under the control of the Detaining Power, and in the territory of every other Power which is a Party to the Convention. (It is believed that the agency of the United States, charged with the care of prisoners of war, would be required to provide free transport or reimburse commercial carriers).

Secondly, there is a provision that rates charged for telegrams, sent by prisoners of war or addressed to them, shall be reduced



so far as possible. The Committee heard the opinion on this point of the Secretary-General of the International Telecommunications Union who was in favor of this provision. (In the United States, with privately owned telegraphic systems, it may be possible to work out some code system, the cost of which would be nominal and so comply with the Convention.)

It was proposed to make a reference in this Article to the Universal Postal Convention. The consideration, inter alia, that certain countries had not adhered to the agreements of the Universal Postal Union relating to postal parcels, caused the proposition to be abandoned.

## ARTICLE 75

SUBSTANCE

Provides that, when the Powers concerned are unable to fulfill their obligations with regard to the transport and shipment of relief supplies, correspondence, etc., the International Committee of the Red Cross or other authorized relief organizations may undertake to insure the conveyance of such shipments. Powers concerned must endeavor to supply the necessary transport and grant necessary safeconducts.

PRESENT TEXT

"Should military operations prevent the Powers concerned from fulfilling their obligation to assure the transport of the shipments referred to in Articles 70, 71, 72 and 77, the Protecting Powers concerned, the International Committee of the Red Cross or any other organization duly approved by the Parties to the conflict may undertake to ensure the conveyance of such shipments by suitable means (railway wagons, motor vehicles, vessels or aircraft, etc.). For this purpose, the High Contracting Parties shall endeavour to supply them with such transport and to allow its circulation, especially by granting the necessary safeconducts.

"Such transport may also be used to convey:

- (a) correspondence, lists and reports exchanged between the Central Information Agency referred to in Article 123 and the National Bureaus referred to in Article 122;
- (b) correspondence and reports relating to prisoners of war which the Protecting Powers, the International Committee of the Red Cross or any other body assisting the prisoners, exchange either with their own delegates or with the Parties to the conflict.

"These provisions in no way detract from the right of any Party to the conflict to arrange other means of transport, if it should so prefer, nor preclude the granting of safe-conducts, under mutually agreed conditions, to such means of transport.

"In the absence of special agreements, the costs occasioned by the use of such means of transport shall be borne proportionally by the Parties to the conflict whose nationals are benefited thereby."

PREVIOUS TEXT

None

BACKGROUND

1. Past U. S. Practices

After long negotiations in World War II the Japanese Government finally agreed to send a ship to pick up relief supplies stored at a Russian Port and to distribute them to American prisoners of war and civilian internees in their custody. The necessary safe conduct for the Japanese ship was accorded by the Soviet Government within Soviet waters and by the Allied military authorities outside these waters. Also, it was possible to take advantage of the two exchanges of civilians with the Japanese Government, one in July 1942, and the other in October 1943, to send to our nationals in the Far East an important quantity of relief supplies by means of the exchange vessels. These supplies included food parcels, medical supplies, cigarettes, clothing, etc. No relief supplies were sent in World War II by the governments of prisoners of war in United States hands.

## 2. Drafting History

Article 75 is an entirely new Article which deals with special transport. It is based on the experience of the Second World War, when, for instance, the International Committee of the Red Cross was itself obliged, on account of the lack of normal means of transport, to find special means of transport, first by sea, then towards the end of the war, by road. The object of the Article is to enable either the International Committee of the Red Cross or any other organization acceptable to the Parties to the conflict, whenever military operations make it impossible for the latter to fulfill the obligation of providing transport for relief supplies, to undertake on its own initiative to make arrangements in whatever way may prove necessary to ensure such transport. It is finally stipulated that the costs occasioned by these means of transportation shall be settled by special agreements; in the absence of such agreements they shall be borne proportionately by the Parties to the conflict whose nationals benefit by such facilities.

ARTICLE 76SUBSTANCE

Specifies that correspondence may be censored only by the dispatching state and the receiving state, and only once by each. Any prohibitions of correspondence may be only temporary and of as short duration as possible.

PRESENT TEXT

"The censoring of correspondence addressed to prisoners of war or despatched by them shall be done as quickly as possible. Mail shall be censored only by the despatching State and the receiving State, and only once by each.

"The examination of consignments intended for prisoners of war shall not be carried out under conditions that will expose the goods contained in them to deterioration; except in the case of written or printed matter, it shall be done in the presence of the addressee, or of a fellow-prisoner duly delegated by him. The delivery to prisoners of individual or collective consignments shall not be delayed under the pretext of difficulties of censorship.

"Any prohibition of correspondence ordered by Parties to the conflict, either for military or political reasons, shall be only temporary and its duration shall be as short as possible."

PREVIOUS TEXTArticle 40 GPW 1929

"Censorship of correspondence must be effected within the shortest possible time. Furthermore, inspection of parcels post must be effected under proper conditions to guarantee the preservation of the products which they may contain and, if possible, in the presence of the addressee or an agent duly recognized by him."

BACKGROUND

## 1. Substantive Changes

The 1949 Convention adds that correspondence addressed to or dispatched by prisoners of war may be censored only by the dispatching State and the receiving State, and only once by each. It further specifies that any prohibitions of correspondence shall be only temporary and that their duration shall be as short as possible.

## 2. Past US Practices

War Department regulations, which governed the treatment of prisoners of war during World War II were in substantial accord with the provisions of the present article. Incoming and outgoing international prisoner of war mail was transmitted through the Office of Censorship. (TM 19-500, 1944 B Chap. 2, Par. 77a)

## 3. Drafting History

The greater part of Article 76 was already contained in Article 40 of the 1929 Convention. The present Article only completes and usefully clarifies the previous Article. An innovation to be noted is that Article 76 provides that both the shipping State and the receiving State shall each be entitled to censor mails only once.



## ARTICLE 77

SUBSTANCE

Requires Detaining Powers to aid and facilitate the execution, authentication and transmission of legal papers and documents, particularly powers of attorney or wills prepared or received by prisoners.

PRESENT TEXT

The Detaining Powers shall provide all facilities for the transmission, through the Protecting Power or the Central Prisoners of War Agency provided for in Article 123, of instruments, papers or documents intended for prisoners of war or despatched by them, especially powers of attorney and wills.

In all cases they shall facilitate the preparation and execution of such documents on behalf of prisoners of war; in particular, they shall allow them to consult a lawyer and shall take what measures are necessary for the authentication of their signatures.

PREVIOUS TEXTArticle 41 GPW 1929

"Belligerents shall assure all facilities for the transmission of instruments, papers or documents intended for prisoners of war or signed by them, particularly of powers of attorney and wills.

"They shall take the necessary measures to assure, in case of necessity, the authentication of signatures made by prisoners."

BACKGROUND

## 1. Substantive Changes

The 1929 Convention required that belligerents facilitate the transmission of legal documents and papers intended for prisoners or signed by them. The 1949 Convention retains the provisions of the earlier Convention and merely elaborates upon them by specifying that such instruments, papers and documents will be transmitted through the Protecting Power or the Central Prisoners of War Agency and further that prisoners may consult a lawyer in connection with such papers and documents.

## 2. Past US Practices

War Department regulations which governed the treatment of prisoners of war during World War II authorized the transmission of legal documents, such as wills and deeds, with outgoing correspondence. (TM 19-500, Chap. 2, Par. 82)

ARTICLE 78SUBSTANCE

Grants prisoners right to make complaints to Detaining and Protecting Powers regarding conditions of captivity.

PRESENT TEXT

"Prisoners of war shall have the right to make known to the military authorities in whose power they are, their requests regarding the conditions of captivity to which they are subjected.

"They shall also have the unrestricted right to apply to the representatives of the Protecting Powers either through their prisoners' representative or, if they consider it necessary, direct, in order to draw their attention to any points on which they may have complaints to make regarding their conditions of captivity.

"These requests and complaints shall not be limited nor considered to be a part of the correspondence quota referred to in Article 71. They must be transmitted immediately. Even if they are recognized to be unfounded, they may not give rise to any punishment."

"Prisoners' representatives may send periodic reports on the situation in the camps and the needs of the prisoners of war to the representatives of the Protecting Powers."

PREVIOUS TEXTArticle 42 GPW 1929

"Prisoners of war shall have the right to inform the military in whose power they are of their requests with regard to the conditions of captivity to which they are subjected.

"They shall also have the right to address themselves to representatives of the protecting powers to indicate to them the points on which they have complaints to formulate with regard to the conditions of captivity.

"These requests and complaints must be transmitted immediately.

"Even if they are recognized to be unfounded, they may not occasion any punishment."

BACKGROUND

## 1. Substantive Changes

The new provisions included are that periodic reports may be submitted to the Protecting Power and that requests and complaints shall not be considered as part of the quota of correspondence permitted by Article 71.

2. Past US Practices

War Department regulations governing the treatment of prisoners of war in World War II were in substantial accord with the present Article.

POSSIBLE QUESTIONS

1. Q - In what cases and under what circumstances, if any, would a detaining Power be privileged to delay, restrict or forbid communication with a Protecting Power?

A - Article 78 provides that prisoners shall have "the unrestricted right" to apply to representatives of the Protecting Power. It also provides that such requests and complaints shall not be included in the correspondence quota referred to in Article 71, so that no limitation on that account may be imposed. Articles 98, 103 and 108 expressly confer the right to complain to a Protecting Power on prisoners in confinement awaiting trial, undergoing disciplinary punishment, or serving a sentence imposed by a judicial proceeding. The only restriction by which a Detaining Power might conceivably limit the right of prisoners to complain is contained in Article 126, which states:

"representatives and delegates of the Protecting Powers shall have full liberty to select the places they wish to visit. The duration and frequency of these visits shall not be restricted. Visits may not be prohibited except for reasons of imperative military necessity, and then only as an exceptional and temporary measure."

The above measure, however, would be at most a delay and would not constitute a limitation.

ARTICLES 79, 80 and 81SUBSTANCE

Provides for selection and duties of prisoners' representatives.

PRESENT TEXT

## Article 79

"In all places where there are prisoners of war, except in those where there are officers, the prisoners shall freely elect by secret ballot, every six months, and also in case of vacancies, prisoners' representatives entrusted with representing them before the military authorities, the Protecting Powers, the International Committee of the Red Cross and any other organization which may assist them. These prisoners' representatives shall be eligible for re-election.

"In camps for officers and persons of equivalent status or in mixed camps, the senior officer among the prisoners of war shall be recognized as the camp prisoners' representative. In camps for officers, he shall be assisted by one or more advisers chosen by the officers; in mixed camps, his assistants shall be chosen from among the prisoners of war who are not officers and shall be elected by them.

"Officer prisoners of war of the same nationality shall be stationed in labour camps for prisoners of war, for the purpose of carrying out the camp administration duties for which the prisoners of war are responsible. These officers may be elected as prisoners' representatives under the first paragraph of this Article. In such a case the assistants to the prisoners' representatives shall be chosen from among those prisoners of war who are not officers.

"Every representative elected must be approved by the Detaining Power before he has the right to commence his duties. Where the Detaining Power refuses to approve a prisoner of war elected by his fellow prisoners of war, it must inform the Protecting Power of the reason for such refusal.

"In all cases the prisoners' representative must have the same nationality, language and customs as the prisoners of war whom he represents. Thus, prisoners of war distributed in different sections of a camp, according to their nationality, language or customs, shall have for each section their own prisoners' representative, in accordance with the foregoing paragraphs."

## Article 80

"Prisoners' representatives shall further the physical, spiritual and intellectual wellbeing of prisoners of war.



"In particular, where the prisoners decide to organize amongst themselves a system of mutual assistance, this organization will be within the province of the prisoners' representative, in addition to the special duties entrusted to him by other provisions of the present Convention.

"Prisoners' representatives shall not be held responsible, simply by reason of their duties, for any offences committed by prisoners of war."

#### Article 81

"Prisoners' representatives shall not be required to perform any other work, if the accomplishment of their duties is thereby made more difficult.

"Prisoners' representatives may appoint from amongst the prisoners such assistants as they may require. All material facilities shall be granted them, particularly a certain freedom of movement necessary for the accomplishment of their duties (inspection of labour detachments, receipt of supplies, etc.).

"Prisoners' representatives shall be permitted to visit premises where prisoners of war are detained, and every prisoner of war shall have the right to consult freely his prisoners' representative.

"All facilities shall likewise be accorded to the prisoners' representatives for communication by post and telegraph with the detaining authorities, the Protecting Powers, the International Committee of the Red Cross and their delegates, the Mixed Medical Commissions and the bodies which give assistance to prisoners of war. Prisoners' representatives of labour detachments shall enjoy the same facilities for communication with the prisoners' representatives of the principal camp. Such communications shall not be restricted, nor considered as forming a part of the quota mentioned in Article 71.

"Prisoners' representatives who are transferred shall be allowed a reasonable time to acquaint their successors with current affairs.

"In case of dismissal, the reasons therefor shall be communicated to the Protecting Powers."

#### PREVIOUS TEXT

#### Article 43 GPW 1929

"In every place where there are prisoners of war, they shall be allowed to appoint agents entrusted with representing them directly with military authorities and protecting Powers.

"This appointment shall be subject to the approval of the military authority.

"The agents shall be entrusted with the reception and distribution of collective shipments. Likewise, in case the prisoners should decide to organize a mutual assistance system among themselves, this organization would be in the sphere of the agents. Further, they may lend their offices to prisoners to facilitate their relations with the aid societies mentioned in Article 78.

"In camps of officers and persons of equivalent status, the senior officer prisoner of the highest rank shall be recognized as intermediary between the camp authorities and the officers and persons of equivalent status who are prisoners. For this purpose, he shall have the power to appoint a prisoner officer to assist him as an interpreter during the conferences with camp authorities."

#### Article 44 GPW 1929

"When the agents are employed as laborers, their activity as representatives of prisoners of war must be counted in the compulsory period of labor.

"All facilities shall be accorded the agents for their intercourse with the military authorities and with the protecting Power. This intercourse shall not be limited.

"No representative of the prisoners may be transferred without the necessary time being allowed him to inform his successors about affairs under consideration."

#### BACKGROUND

##### 1. Substantive Changes

Articles 79 (Elections) and 80 (Duties), elaborate on Article 43 of the 1929 Convention without, however, making any essential change. It may be mentioned that Article 79 provides for the election of prisoners' representatives every six months, and in the event of the Detaining Power's refusing to recognize the representative chose, the reasons for such refusal must be communicated to the Protecting Power concerned. Article 79 also includes details concerning the election of the prisoners' representative and his assistants in camps for officer prisoners, and (this is new) in camps which include both officers and privates. It provides further that officers will be assigned to labor camps in an administrative capacity, and that these officers may be elected as prisoners' representatives. Lastly, this Article contains another important innovation: prisoners' representatives shall not be held responsible simply by reason of their functions, for any offenses committed by prisoners of war.

Article 81 dealing with prerogatives of prisoners' representatives makes several innovations. It stipulates, for instance, that prisoners' representatives may choose assistants from amongst the prisoners and that they shall be permitted to visit premises where prisoners of war

are detained. It also increases the number of organizations with which prisoners' representatives may correspond. It further stipulates that prisoners' representative of labor detachments shall enjoy all facilities for communication with the prisoners' representative of the principal camp. He shall act as spokesman for the group but his acts are nevertheless carried out only with the approval of the Detaining Power and is not vested with disciplinary powers over his fellow prisoners of war.

## 2. Past US Practices

Paragraph 16, Technical Manual 19-500, 5 October 1944, provided:

### "16. Spokesmen

"a. At each prisoner of war base or branch camp, prisoners will select from their number a spokesman to represent them as agent or intermediary before the military authorities, the Protecting Power, and relief or aid organizations. The selection of the spokesman for enlisted prisoners and his continuance in that capacity will be subject to the approval of the camp commander. In camps of officer prisoners and assimilies, the senior officer prisoner in the highest grade, unless incapacitated or incompetent, will be recognized as the spokesman. If camps are occupied by both officer and enlisted prisoners, each of these groups will be represented by its respective spokesman.

"b. Medical personnel and chaplains are not considered prisoners of war and are not eligible to act as spokesman of prisoners.

"c. The camp commander in his discretion may authorize the selection by the prisoners of such additional spokesmen for prisoner units as he may deem appropriate. These additional spokesmen may be removed at the will of the camp commander.

"d. In addition to their other duties the spokesmen will be responsible for the maintenance and cleanliness of the quarters of their respective units. They may be used also to relay orders to their units.

"e. Spokesmen will not be allowed to exercise any disciplinary powers.

"f. Except where in the opinion of the base camp commander the distance is too great between base and branch camps, the spokesman at the base camp will be permitted to visit branch camps periodically.

"g. When, under f above, the spokesman at the base camp is not permitted to visit branch camps, the branch camp spokesman will be permitted to communicate with the base camp commander through the branch camp commander and also with the Protecting Power without consulting the base camp spokesman."

POSSIBLE QUESTIONS

1. Q - To what extent is a prisoners' representative permitted to cooperate with authorities of the Detaining Power in order to obtain proper treatment for prisoners, in view of recent convictions of military personnel for acts of collaboration with the enemy while prisoners of war?

A - Prisoners would be expected to follow a course of conduct consistent with the Uniform Code of Military Justice, and would not obtain immunity from prosecution for criminal acts solely by reason of having been chosen as prisoners' representatives.

2. Q - Must a representative forward all complaints made to him by fellow prisoners?

A - No specific requirement to this effect is found in the Convention but he must stand for re-election every six months. His existence does not curtail the individual's right to enter complaints.



ARTICLES 82 and 83

SUBSTANCE

Provides that prisoners shall be subject to the laws, regulations and orders in force in the armed forces of the Detaining Power.

Detaining Power shall insure that leniency is exercised wherever possible.

PRESENT TEXT

Article 82

"A prisoner of war shall be subject to the laws, regulations and orders in force in the armed forces of the Detaining Power; the Detaining Power shall be justified in taking judicial or disciplinary measures in respect of any offence committed by a prisoner of war against such laws, regulations or orders. However, no proceedings or punishments contrary to the provisions of this Chapter shall be allowed.

"If any law, regulation or order of the Detaining Power shall declare acts committed by a prisoner of war to be punishable, whereas the same acts would not be punishable if committed by a member of the forces of the Detaining Power, such acts shall entail disciplinary punishments only."

Article 83

"In deciding whether proceedings in respect of an offence alleged to have been committed by a prisoner of war shall be judicial or disciplinary, the Detaining Power shall ensure that the competent authorities exercise the greatest leniency and adopt, wherever possible, disciplinary rather than judicial measures."

PREVIOUS TEXTS

Article 45, GPW, 1929

"Prisoners of war shall be subject to the laws, regulations, and orders in force in the armies of the Detaining Power.

"An act of insubordination shall justify the adoption towards them of the measures provided by such laws, regulations and orders.

"The provisions of the present chapter, however, are reserved."

Article 52, GPW, 1929

"Belligerents shall see that the competent authorities exercise the greatest leniency in deciding the question of whether an infraction committed by a prisoner of war should be punished by disciplinary or judicial measures.



"This shall be the case especially when it is a question of deciding on acts in connection with escape or attempted escape.

"A prisoner may not be punished more than once because of the same act or the same count."

## BACKGROUND

### 1. Substantive Changes

The provision /~~limiting~~/ to disciplinary punishment the sanction for infractions of laws or regulations which are not also applicable to members of the forces of the Detaining Power is new.

### 2. Past US Practices

The following provision was applicable during the last war:

"Prisoners are subject to the laws, regulations, and orders in force in the Army of the United States including the Articles of War. They are not subject to the laws, regulations, or orders of the country in whose Armed Forces they served, except as prescribed in this manual. Prisoners are within the jurisdiction of courts-martial and are liable to punishment by the Army of the United States. Prisoners also are subject to the civil laws of the United States and of the State and municipality where interned." (TM 19-500, 5 Oct 44, p. 2.31).

Article 2 of the Uniform Code of Military Justice provides specifically for the trial of prisoners of war. This Article would remain applicable under the 1949 Conventions and apparently would require trial by courts-martial, with all attendant safeguards, when taken in conjunction with Article 85, GPW.

### 3. Drafting History

During the second World War the problem had been presented of penal provisions being established by a Detaining Power designed solely for prisoners of war. In the future by virtue of Article 82, infringements of these provisions shall entail only disciplinary action.

## ARTICLE 84

SUBSTANCE

Provides for trial of prisoners by military courts only, unless the laws of Detaining Power permit trial of members of its armed forces by civil courts for the particular offense. Requires court to offer guaranties of independence and impartiality, and rights and means of defense provided in Article 105.

PRESENT TEXT

"A prisoner of war shall be tried only by a military court, unless the existing laws of the Detaining Power expressly permit the civil courts to try a member of the armed forces of the Detaining Power in respect to the particular offence alleged to have been committed by the prisoner of war.

"In no circumstances whatever shall a prisoner of war be tried by a court of any kind which does not offer the essential guarantees of independence and impartiality as generally recognized, and, in particular, the procedure of which does not afford the accused the rights and means of defence provided for in Article 105."

PREVIOUS TEXTArticle 63 GPW 1929

"Sentence may be pronounced against a prisoner of war only by the same courts and according to the same procedure as in the case of persons belonging to the Armed Forces of the detaining Power."

BACKGROUND

## 1. Substantive Changes

A provision has been added requiring that the court trying a prisoner offer the essential guarantees of independence and impartiality, particularly those set forth in Art. 105.

## 2. Past US Practices

During the last war the following provision was contained in the War Department publication, "Enemy Prisoners of War":

"If trial of a prisoner is advisable, it will be held before a court-martial and not a civil court, unless there are strong reasons for the opposite course." (TM 19-500, 5 Oct 44, p. 2.31).

### 3. Drafting History

The trial and punishment of prisoners was the subject of charges under general international law and conviction of war crimes after WW II. In the Trial of Isayama et al, 5 War Crimes Reports p. 60, (1948), the accused, including a former commander of a Japanese army in China, were convicted for their part in the trial and sentencing to death by a Japanese Military Tribunal of captured American airmen (see also Trial of Sawada et al, 5 War Crimes Reports (1949)). The evidence showed that the accused had based their findings in their trial of prisoners of war upon falsified evidence and that, inter alia, the accused prisoners of war had had no opportunity to defend themselves.

## Article 85

SUBSTANCE

Provides that prisoners prosecuted for acts committed before capture retain benefits of Convention even if convicted.

PRESENT TEXT

"Prisoners of war prosecuted under the laws of the Detaining Power for acts committed prior to capture shall retain, even if convicted, the benefits of the present Convention.

PREVIOUS TEXTS - None

BACKGROUND

## 1. Substantive changes

The view hitherto taken by the United States and other nations which prosecuted individuals for war crimes following World War II has been that persons who would otherwise be subject to the protections afforded by GPW 1929 lose their status as prisoners of war when charged with offenses against the laws and customs of war. It has also been held that, in any case, military personnel tried for war crimes do not benefit either from the military law of the United States applicable to its own armed forces or from the provisions of GPW 1929 relating to the trial of prisoners, which apply only to offenses committed by prisoners while in the custody of the Detaining Power (In re Yamashita, 327 U.S. 1 (1946)). The new Convention provides that such persons retain their status as prisoners of war under the treaty both while being tried and after conviction.

## 2. Drafting History

During consideration of this Article, the Soviet representative offered an amendment, adding to the text the following:

"Prisoners of war convicted of war crimes and crimes against humanity under the legislation of the Detaining Power, and in conformity with the principles of the Nurnberg Trial, shall be treated in the same way as persons serving a sentence for a criminal offense in the territory of the Detaining Power."

The Soviet delegation urged that prisoners convicted of war crimes and crimes against humanity "lost all human dignity and debarred themselves from the advantages of the Convention." The 1929 Convention only dealt with crimes committed during captivity, but the Conference of Government Experts of 1947 considered it reasonable not to deprive a prisoner of war of the protection of the Convention on the mere allegation that he had violated the laws and customs of

war, but to leave him under the protection of the Convention until such violation had been proved in a court of law. The Stockholm text went further and kept the war criminal under the protection of the Convention even after he had been convicted. The United States Delegate opposed the proposed amendment and pointed out that a mature national legislation clearly defines that anyone who breaks the law remains, without prejudice to his punishment, under the benefit of such legislation.

### 3. Previous United States Practice

The United States has, in the past, followed the then accepted rules of customary international law under which, as indicated by the Supreme Court in re Yamashita, a member of the enemy armed forces belonged to a class of persons to which the Articles of War did not apply and that those provisions of GPW 1929 concerning the trial of war prisoners were applicable only to offenses committed by prisoners of war while in the custody of the Detaining Power.



POSSIBLE QUESTIONS

Q - Does Article 85 apply to spies and other unauthorized belligerents, in view of the provision of Article 5 that persons of doubtful standing are to enjoy POW status until their actual status is determined?

A - No. Until a determination as to their status had been made by a competent tribunal, suspected spies and others would be under the protection of the Conventions.

(See general paper on effect of reservations with respect to reservation on this Article by the Soviet bloc.)

Q - If persons charged with war crimes retain the benefit of the Prisoners of War Convention, what change will this make in United States practice with regard to war criminals?

A - Essentially, the new Convention requires that prisoners of war charged with war crimes must be tried, like other prisoners of war, "by the same courts according to the same procedure as in the case of members of the armed forces of the Detaining Power", as provided by Article 102, GPW. Accordingly, suspected war criminals who may be tried by the United States must now be tried in conformity with the Uniform Code of Military Justice and the Manual for Courts-Martial. Some of the changes from previous practice which this will entail are:

1. Suspected war criminals must be tried by the United States by courts-martial.
2. Suspected war criminals may no longer be tried by an international tribunal, except if the law of the Detaining Power permits trial of members of its own armed forces by an international court. The Uniform Code of Military Justice does not permit this in the case of United States military personnel.
3. The admission of evidence must conform to the principles observed in courts-martial. Under this criterion, much of the evidence which was admitted in war crimes trials following World War II would probably be excluded.
4. Convicted war criminals will have the right, in the case of prosecutions by the United States, to appeal to the Court of Military Appeals.
5. Notification of trials must be given to the Protecting Power (Art. 102, GPW).

Q - What changes in the statutory law of the United States will Article 85 require?

A - None. Article 2(9) of the Uniform Code of Military Justice makes "prisoners of war in custody of the armed forces" subject to the Code.

ARTICLE 86SUBSTANCE

Provides that no prisoner may be punished more than once for the same act or on the same charge.

PRESENT TEXT

"No prisoner of war may be punished more than once for the same act or on the same charge."

PREVIOUS TEXTSArticle 52, GPW 1929

"A prisoner may not be punished more than once because of the same act or the same count."

BACKGROUND

## 1. Substantive Changes

None.

## 2. Past US Practices

Paragraph 125, Field Manual 27-10, 1 October 1940, adopted the language of the 1929 Convention as the regulation applicable to prisoners of war held by U. S. forces.

## 3. Drafting History

The Delegate of the United Kingdom had offered an amendment which inserted "be sentenced or" before "punished." This was intended to preclude prisoners from being convicted and sentenced more than once for the same offense as had frequently happened in Germany during the last war. This amendment was withdrawn after it had been explained that the title of the Article, "non bis in idem" (no trial again for the same offense), eliminated any doubt as to the meaning of this provision. The comparable provision of the Constitution of the United States is:

"\* \* \*nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb;  
\* \* \*."

## ARTICLE 87

SUBSTANCE

Provides that prisoners may not be sentenced to any penalties except as provided for members of armed forces of Detaining Power who have committed the same acts; collective punishment for individual acts, corporal punishment, imprisonment without daylight, and torture or cruelty are forbidden.

PRESENT TEXT

"Prisoners of war may not be sentenced by the military authorities and courts of the Detaining Power to any penalties except those provided for in respect of members of the armed forces of the said Power who have committed the same acts.

"When fixing the penalty, the courts or authorities of the Detaining Power shall take into consideration, to the widest extent possible, the fact that the accused, not being a national of the Detaining Power, is not bound to it by any duty of allegiance, and that he is in its power as the result of circumstances independent of his own will. The said courts or authorities shall be at liberty to reduce the penalty provided for the violation of which the prisoner of war is accused, and shall therefore not be bound to apply the minimum penalty prescribed.

"Collective punishment for individual acts, corporal punishment, imprisonment in premises without daylight and, in general, any form of torture or cruelty, are forbidden.

"No prisoner of war may be deprived of his rank by the Detaining Power, or prevented from wearing his badges."

PREVIOUS TEXTSArticle 46 GPW 1929 POW Convention

"Punishments other than those provided for the same acts for soldiers of the national armies may not be imposed upon prisoners of war by the military authorities of the detaining Power."

"Any corporal punishment, any imprisonment in quarters without daylight and in general, any form of cruelty, is forbidden."

"Collective punishment for individual acts is also forbidden."

Article 49 GPW 1929

"No prisoner of war may be deprived of his rank by the detaining Power."

## ARTICLE 88

SUBSTANCE

Requires that prisoners undergoing punishment not be subjected to more severe treatment than members of armed forces of Detaining Power of equivalent rank; women prisoners not to be punished or treated more severely than male or female members of the armed forces of the Detaining Power dealt with for a similar offense.

PRESENT TEXT

"Officers, non-commissioned officers and men who are prisoners of war undergoing a disciplinary or judicial punishment, shall not be subjected to more severe treatment than that applied in respect of the same punishment to members of the armed forces of the Detaining Power of equivalent rank.

"A woman prisoner of war shall not be awarded or sentenced to a punishment more severe, or treated whilst undergoing punishment more severely, than a woman member of the armed forces of the Detaining Power dealt with for a similar offence.

"In no case may a woman prisoner of war be awarded or sentenced to a punishment more severe, or treated whilst undergoing punishment more severely, than a male member of the armed forces of the Detaining Power dealt with for a similar offence.

"Prisoners of war who served disciplinary or judicial sentences may not be treated differently from other prisoners of war."

PREVIOUS TEXTSArticle 46, GPW 1929

"Rank being identical, officers, non-commissioned officers or soldiers who are prisoners of war undergoing a disciplinary punishment, shall not be subject to less favorable treatment than that provided in the armies of the Detaining Power with regard to the same punishment."

Article 48, GPW 1929

"Prisoners of war may not be treated differently from other prisoners after having suffered the judicial or disciplinary punishment which has been imposed on them."



BACKGROUND

## 1. Substantive Changes

The provisions dealing with the protection of women prisoners were added, in view of the employment of women in the armed forces on a large scale in World War II for the first time.

## 2. Past US Practices

"Punishments other than those provided for the same acts for soldiers of the national armies may not be imposed upon prisoners of war by the military authorities and courts of the Detaining Power.

"Officers, non-commissioned officers, or soldiers who are prisoners of war undergoing disciplinary punishment shall not receive less favorable treatment than that provided in connection with the same punishment for those of equal rank in the army." (TM 19-500)

## 3. Drafting History

Consideration was given to the inclusion of a special provision for adolescents (under 18). The Sub-Committee at Geneva felt that such was not necessary, inasmuch as under Article 16 preferential treatment could be given to adolescents.

ARTICLES 89, 90

SUBSTANCE

Establish the types of disciplinary punishments applicable to prisoners of war; i.e., limited fines, suspension of discretionary privileges, limited fatigue duties, confinement. Requires that they not be inhuman, brutal or dangerous to health.

Limit to 30 days the duration of any disciplinary punishment for acts - however many or unrelated - committed at the same time.

PRESENT TEXT

"The disciplinary punishments applicable to prisoners of war are the following:

"(1) A fine which shall not exceed 50 per cent of the advances of pay and working pay which the prisoner of war would otherwise receive under the provisions of Articles 60 and 62 during a period of not more than thirty days.

"(2) Discontinuance of privileges granted over and above the treatment provided for by the present Convention.

"(3) Fatigue duties not exceeding two hours daily.

"(4) Confinement.

"The punishment referred to under (3) shall not be applied to officers.

"In no case shall disciplinary punishments be inhuman, brutal or dangerous to the health of prisoners of war."

Article 90 GPW

"The duration of any single punishment shall in no case exceed thirty days. Any period of confinement awaiting the hearing of a disciplinary offence or the award of disciplinary punishment shall be deducted from an award pronounced against a prisoner of war.

The maximum of thirty days provided above may not be exceeded, even if the prisoner of war is answerable for several acts at the same time when he is awarded punishment, whether such acts are related or not.

The period between the pronouncing of an award of disciplinary punishment and its execution shall not exceed one month.

When a prisoner of war is awarded a further disciplinary punishment, a period of at least three days shall elapse between the execution of any two of the punishments, if the duration of one of these is ten days or more."

ARTICLES 89, 90

PREVIOUS TEXTS

Article 54 GPW 1929

"Arrest is the most severe disciplinary punishment which may be imposed on a prisoner of war.

"The duration of a single punishment may not exceed thirty days.

"This maximum of thirty days may not, further, be exceeded in the case of several acts for which the prisoner has to undergo discipline at the time when it is ordered for him, whether or not these acts are connected.

"When, during or after the end of a period of arrest, a prisoner shall have a new disciplinary punishment imposed upon him, a space of at least three days shall separate each of the periods of arrest, if one of them is ten days or more."

Article 55 GPW 1929

"Subject to the provisions given in the last paragraph of Article 11, food restrictions allowed in the armies of the Detaining Power are applicable, as an increase in punishment, to prisoners of war given disciplinary punishment.

"However, these restrictions may be ordered only if the state of health of the prisoners punished permits it."

Article 47, GPW 1929

"In all cases, the duration of preventive imprisonment shall be deducted from the disciplinary or judicial punishment inflicted, provided that this deduction is allowed for national soldiers."

BACKGROUND

1. Substantive Changes

Disciplinary measures affecting rations which had been permissible under the 1929 Convention have been eliminated.

2. Past US Practices

Paragraph 58h, Technical Manual 19-500, 5 October 1944, provided:

"Section V, AR 600-375, 17 May 1943, permits food restrictions as an increase in punishment to prisoners confined in guardhouse undergoing disciplinary punishment. In no event shall a restricted diet be imposed in excess of 14 continuous days, nor will it be repeated until an interval of 14 days shall have elapsed, and it will not exceed 84 days in 1 year."

A restricted diet may be ordered only if the state of health of the prisoner to be punished permits it. The minimum food allowance will include 18 ounces of bread each day and as much water as the prisoner may desire. The limitations on food restrictions listed above do not apply to administrative measures discussed in paragraph 59, this chapter."

### 3. Drafting History

Article 89 enumerates limitations on the various forms of punishment that may be imposed on prisoners. It was considered advisable to omit the idea of punishment by disciplinary measures affecting rations, accepted in 1929. The 1929 maximum of thirty days was retained in relation to the duration of punishments, as were also the stipulations regarding the period which must elapse between two successive punishments, and the reduction which must be made in compensation for the time spent in detention awaiting trial.

POSSIBLE QUESTIONS

Q - May punishments other than those listed be imposed?

A - No.



## ARTICLES 91, 92, 93, 94

SUBSTANCE

Prescribes when escape of prisoner is complete. Provides that prisoners who have made their escape shall not be liable to punishment upon recapture, and are liable only for disciplinary punishment and subject to special surveillance if captured before completion of escape. Prisoners of war who committed offenses to facilitate their escape and not entailing violence to life and limb and prisoners who abet in an escape shall be subject to disciplinary punishment only.

PRESENT TEXTSArticle 91

"The escape of a prisoner of war shall be deemed to have succeeded when:

- (1) he has joined the armed forces of the Power on which he depends, or those of an allied Power;
- (2) he has left the territory under the control of the Detaining Power, or of an ally of the said Power;
- (3) he has joined a ship flying the flag of the Power on which he depends, or of an allied Power, in the territorial waters of the Detaining Power, the said ship not being under the control of the last named Power.

"Prisoners of war who have made good their escape in the sense of this Article and who are recaptured, shall not be liable to any punishment in respect of their previous escape."

Article 92

"A prisoner of war who attempts to escape and is recaptured before having made good his escape in the sense of Article 91 shall be liable only to a disciplinary punishment in respect of this act, even if it is a repeated offence.

"A prisoner of war who is recaptured shall be handed over without delay to the competent military authority.

"Article 88, fourth paragraph, notwithstanding, prisoners of war punished as a result of an unsuccessful escape may be subjected to special surveillance. Such surveillance must not affect the state of their health, must be undergone in a prisoner of war camp, and must not entail the suppression of any of the safeguards granted them by the present Convention."

Article 93

"Escape or attempt to escape, even if it is a repeated offence, shall not be deemed an aggravating circumstance if the prisoner of war is subjected to trial by judicial proceedings in respect of an offence committed during his escape or attempt to escape.

"In conformity with the principle stated in Article 83, offences committed by prisoners of war with the sole intention of facilitating their escape and which do not entail any violence against life or limb, such as offences against public property, theft without intention of self-enrichment, the drawing up or use of false papers, or the wearing of civilian clothing, shall occasion disciplinary punishment only.

"Prisoners of war who aid or abet an escape or an attempt to escape shall be liable on this count to disciplinary punishment only."

#### Article 94

"If an escaped prisoner of war is recaptured, the Power on which he depends shall be notified thereof in the manner defined in Article 122, provided notification of his escape has been made."

#### PREVIOUS TEXTS

##### Article 50, GPW 1929

"Escaped prisoners of war who are retaken before being able to rejoin their own army or to leave the territory occupied by the army which captured them shall be liable only to disciplinary punishment.

"Prisoners who, after having succeeded in rejoining their army or in leaving the territory occupied by the army which captured them, may again be taken prisoners, shall not be liable to any punishment on account of their previous flight."

##### Article 51, GPW 1929

"Attempted escape, even if it is a repetition of the offense, shall not be considered as an aggravating circumstance in case the prisoner of war should be given over to the courts on account of crimes or offenses against persons or property committed in the course of that attempt.

"After an attempted or accomplished escape, the comrades of the person escaping who assisted in the escape may incur only disciplinary punishment on this account."

##### Article 52, GPW 1929

"Belligerents shall see that the competent authorities exercise the greatest leniency in deciding the question of whether an infraction committed by a prisoner of war should be punished by disciplinary or judicial measures.

"This shall be the case especially when it is a question of deciding on acts in connection with escape or attempted escape."

Article 48, GPW 1929

"However, prisoners punished as a result of attempted escape may be subjected to special surveillance, which, however, may not entail the suppression of the guarantees granted prisoners by the present Convention."

BACKGROUND

1. Substantive Changes

There are two important innovations in the provisions relating to escape. First, the conditions to be fulfilled in order that escapes may be regarded as successful have been accurately defined. Secondly, in order to prevent the Detaining Power from inflicting unduly severe punishments for certain breaches of minor importance normally associated with escapes, as an indirect form of penalizing the latter, it was decided to mention such breaches explicitly, and to provide that they should only involve disciplinary punishment.

2. Past US Practices

Paragraphs 121, 123, 124, and 125, Field Manual 27-10, 1 October 1940, adopted the text of the 1929 Convention as the applicable U. S. regulations.

Previously, the majority of decided cases had held that offenses committed in the course of an attempt to escape were cognizable in the ordinary criminal courts (see, for example, R. v. Schindler, Canada, 1943-1945 Annual Digest 403).

POSSIBLE QUESTIONS

Q. May civilians in occupied areas be subjected to more serious penalties if they aid in the escape of a prisoner of war?

A. Yes, provided the penalty is not in excess of that provided in Article 68, Geneva Civilians Convention.



## ARTICLE 95

SUBSTANCE

Limits confinement of prisoners pending hearing on disciplinary charges to 14 days and to cases where a member of the armed forces of the Detaining Power would be confined, or confinement is essential to order and discipline. The safeguards of Articles 97 and 98 regarding disciplinary punishment apply.

PRESENT TEXT

"A prisoner of war accused of an offence against discipline shall not be kept in confinement pending the hearing unless a member of the armed forces of the Detaining Power would be so kept if he were accused of a similar offence, or if it is essential in the interests of camp order and discipline.

"Any period spent by a prisoner of war in confinement awaiting the disposal of an offence against discipline shall be reduced to an absolute minimum and shall not exceed fourteen days.

"The provisions of Articles 97 and 98 of this Chapter shall apply to prisoners of war who are in confinement awaiting the disposal of offences against discipline."

PREVIOUS TEXTSArticle 47 GPW 1929

"Acts constituting an offense against discipline, and particularly attempted escape, shall be verified immediately; for all prisoners of war, commissioned or not, preventive arrest shall be reduced to the absolute minimum."

BACKGROUND

## 1. Substantive Changes

Article 95 expands the 1929 provisions concerning prehearing procedure, the importance of which was demonstrated during World War II. The conditions and maximum duration of confinement before hearing have been defined. The principle of giving prisoners treatment equivalent to that received by members of the armed forces of the Detaining Power is established.

## 2. Past US Practices

War Department practices during the last war conformed to Article 47, GPW, 1929.



## ARTICLE 96

SUBSTANCE

Provides that disciplinary punishment may be ordered only by a camp commander, a court, or higher military authority and may not be delegated to or exercised by a prisoner of war. Requires that accused be given an opportunity to defend himself.

PRESENT TEXT

"Acts which constitute offences against discipline shall be investigated immediately.

"Without prejudice to the competence of courts and superior military authorities, disciplinary punishment may be ordered only by an officer having disciplinary powers in his capacity as camp commander, or by a responsible officer who replaces him or to whom he has delegated his disciplinary powers.

"In no case may such powers be delegated to a prisoner of war or be exercised by a prisoner of war.

"Before any disciplinary award is pronounced, the accused shall be given precise information regarding the offences of which he is accused, and given an opportunity of explaining his conduct and of defending himself. He shall be permitted, in particular, to call witnesses and to have recourse, if necessary, to the services of a qualified interpreter. The decision shall be announced to the accused prisoner of war and to the prisoners' representative.

"A record of disciplinary punishments shall be maintained by the camp commander and shall be open to inspection by representatives of the Protecting Power.

PREVIOUS TEXTSArticle 59 GPW 1929

"Excepting the competence of courts and higher military authorities, disciplinary punishment may be ordered only by an officer provided with disciplinary powers in his capacity as commander of a camp or detachment, or by the responsible officer replacing him."

BACKGROUND

## 1. Substantive Changes

A requirement of prompt investigation has been added. Delegation of disciplinary powers to prisoners of war is now forbidden. The right of a prisoner to have the means of defending himself is now spelled out and a record of disciplinary punishment must be maintained.

## 2. Past US Practices

War Department Technical Manual TM 19-500, 5 Oct 44, p. 230 provided:

"Under the authority of Article 59 of the Geneva Convention of 1929, Relative to the Treatment of Prisoner of War; camp commanders are authorized to exercise 'disciplinary powers' in respect to prisoners of war under their control. In the exercise of these disciplinary powers, camp commanders may impose disciplinary punishments upon prisoners as authorized by Articles 54, 55, 56, 57, and 58 of the Geneva Convention."

"Command or disciplinary functions will not be delegated to prisoners", id. page 2.32.

Q. Does this article require, by reason of the provisions of Article 82 (POWs to be subject to laws in force in the armed forces of the Detaining Power) that camp commanders and their representatives be appointed summary courts in order to punish prisoners for disciplinary offenses?

A. No. A camp commander or his representative need not be appointed a summary court in order to impose disciplinary punishment upon a prisoner of war under Article 96 of the Convention.

ARTICLE 97

SUBSTANCE

Provides that prisoners shall not be transferred to penitentiary establishments to undergo disciplinary punishments. Requires officers be lodged in separate quarters from non-commissioned officers, and women prisoners to be confined in separate quarters from male prisoners and under immediate supervision of women.

PRESENT TEXT

"Prisoners of war shall not in any case be transferred to penitentiary establishments (Prisons, penitentiaries, convict prisons, etc.) to undergo disciplinary punishment therein.

"All premises in which disciplinary punishments are undergone shall conform to the sanitary requirements set forth in Article 25. A prisoner of war undergoing punishment shall be enabled to keep himself in a state of cleanliness, in conformity with Article 29.

"Officers and persons of equivalent status shall not be lodged in the same quarters as non-commissioned officers or men.

"Women prisoners of war undergoing disciplinary punishment shall be confined in separate quarters from male prisoners of war and shall be under the immediate supervision of women."

PREVIOUS TEXTS

Article 56, GPW, 1929

"In no case may prisoners of war be transferred to penitentiary establishments (prison, penitentiaries, convict prisons, etc.) there to undergo disciplinary punishment.

"The quarters in which they undergo disciplinary punishment shall conform to sanitary requirements.

"Prisoners punished shall be enabled to keep themselves in a state of cleanliness."

Article 49, GPW, 1929

"\*\*\*In particular, officers and persons of equivalent status who suffer punishment involving deprivation of liberty shall not be placed in the same quarters as noncommissioned officers or privates being punished."

BACKGROUND

## 1. Substantive Changes

There is a new provision that women prisoners of war shall be quartered separately.

## 2. Past US Practices

Paragraph 122 and 129, Field Manual 27-10, 1 October 1944, adopted the language of the 1929 Convention as the U.S. provisions applicable to prisoners of war.

## 3. Drafting History

These provisions regarding quarters and essential safeguards during the execution of punishments are substantially the same as those provided under the 1929 Convention.



## ARTICLE 98

SUBSTANCE

Provides that prisoners undergoing disciplinary punishment shall continue to enjoy the benefits of this Convention, including daily exercise, permission to read and write, medical inspections, etc.

PRESENT TEXT

"A prisoner of war undergoing confinement as a disciplinary punishment, shall continue to enjoy the benefits of the provisions of this Convention except in so far as these are necessarily rendered inapplicable by the mere fact that he is confined. In no case may he be deprived of the benefits of the provisions of Articles 78 and 126.

"A prisoner of war awarded disciplinary punishment may not be deprived of the prerogatives attached to his rank.

"Prisoners of war awarded disciplinary punishment shall be allowed to exercise and to stay in the open air at least two hours daily.

"They shall be allowed, on their request, to be present at the daily medical inspections. They shall receive the attention which their state of health requires and, if necessary, shall be removed to the camp infirmary or to a hospital.

"They shall have permission to read and write, likewise to send and receive letters. Parcels and remittances of money however, may be withheld from them until the completion of the punishment; they shall meanwhile be entrusted to the prisoners' representative, who will hand over to the infirmary the perishable goods contained in such parcels."

PREVIOUS TEXTSArticle 49, GPW 1929

"No prisoner of war may be deprived of his rank by the detaining Power.

"Prisoners given disciplinary punishment may not be deprived of the prerogatives attached to their rank."

Article 57, GPW 1929

"Prisoners of war given disciplinary punishment shall be allowed to read and write, as well as to send and receive letters.

"On the other hand, packages and money sent may not be delivered to the addressees until the expiration of the punishment. If the packages not distributed contain perishable products, these shall be turned over to the camp infirmary or kitchen."

Article 58, GPW 1929

"Prisoners of war given disciplinary punishment shall be allowed, on their request, to be present at the daily medical inspection. They shall receive the care considered necessary by the doctors and, if necessary, shall be removed to the camp infirmary or to hospitals."

Article 56, GPW 1929

"These prisoners shall every day be allowed to exercise or to stay in the open air at least two hours."

BACKGROUND

1. Substantive Changes

It is now expressly stated that prisoners undergoing confinement as a disciplinary punishment continue to enjoy the benefits of the Convention, a principle which had, however, been implicit in GPW 1929.

2. Past U. S. Practices

The United States followed the above-cited articles of GPW 1929.

ARTICLE 99SUBSTANCE

Provides that no prisoner may be sentenced or punished for an act not forbidden by the law of the Detaining Power or by international law, at the time the act was committed. Prisoners may not be coerced into admitting guilt.

Requires opportunity be afforded for defense and assistance of qualified counsel.

PRESENT TEXT

"No prisoner of war may be tried or sentenced for an act which is not forbidden by the law of the Detaining Power or by international law, in force at the time the said act was committed.

"No moral or physical coercion may be exerted on a prisoner of war in order to induce him to admit himself guilty of the act of which he is accused.

"No prisoner of war may be convicted without having had an opportunity to present his defence and the assistance of a qualified advocate or counsel.

PREVIOUS TEXTSArticle 61 GPW 1929

"No prisoner of war may be sentenced without having had an opportunity to defend himself.

"No prisoner may be obliged to admit himself guilty of the act of which he is accused."

Article 62, GPW 1929

"The prisoner of war shall be entitled to assistance by a qualified counsel of his choice, and, if necessary, to have recourse to the services of a competent interpreter."

BACKGROUND

## 1. Substantive Changes

The principle embodied in the first paragraph is new, and carries into the Convention the commonly-accepted prohibition against ex post facto legislation and arbitrarily imposed punishments.

## 2. Past U.S. Practices

Paragraphs 134 and 135, Field Manual 27-10, 1 October 1940, cited the text of the 1929 Convention as the regulations applicable to prisoners held under the control of the U.S.

## 3. Drafting History

The principle, "nullum crimen sine lege" (no crime without a law), has been added to the fundamental principles which were contained in Article 61 of the 1929 Convention; it has however been specified, in order to take into account Article 85, that both the legislation of the Detaining Power and International Law must be taken into consideration, provided that the latter is taken to mean its generally recognized provisions. It has also been laid down that no prisoner of war may be tried without having the assistance of qualified counsel.

ARTICLE 100

SUBSTANCE

Requires that prisoners and Protecting Powers be informed of offenses which are punishable by death sentence and that no new offenses be made subject to the death penalty without the concurrence of the Protecting Power. Provides that death sentences cannot be pronounced unless the court's attention has been called to fact that the accused is not a national of the Detaining Power, and is not bound by any duty of allegiance.

PRESENT TEXT

"Prisoners of war and the Protection Powers shall be informed as soon as possible of the offences which are punishable by the death sentence under the laws of the Detaining Power.

"Other offences shall not thereafter be made punishable by the death penalty without the concurrence of the Power on which the prisoners of war depend.

"The death sentence cannot be pronounced on a prisoner of war unless the attention of the court has, in accordance with Article 87, second paragraph, been particularly called to the fact that since the accused is not a national of the Detaining Power, he is not bound to it by any duty of allegiance, and that he is in its power as the result of circumstances independent of his own will."

PREVIOUS TEXTS

None.

BACKGROUND

Drafting History

A member of the United States delegation explained that the third paragraph was intended to enlist the clemency, sympathy, and understanding of the court for the situation of a prisoner of war on trial for his life. It was not intended to restrict the action of the court.



ARTICLE 101

SUBSTANCE

Provides that the death penalty cannot be executed until six months after the Protecting Power receives notice of the sentence.

PRESENT TEXT

"If the death penalty is pronounced on a prisoner of war, the sentence shall not be executed before the expiration of a period of at least six months from the date when the Protection Power receives, at an indicated address, the detailed communication provided for in Article 107."

PREVIOUS TEXTS

"The sentence shall not be executed before the expiration of a period of at least three months after this communication."

BACKGROUND

1. Substantive Changes

The period which must expire prior to the execution of the sentence has been increased from three to six months.

2. Past U.S. Practices

Paragraph 139, Field Manual 27-10, 1 October 1940, quoted the requirement of Article 66, GPW, 1929.

ARTICLE 102SUBSTANCE

Provides that prisoner may be validly sentenced only if the sentence has been pronounced by the same courts according to the same procedure as in the case of members of the armed forces of the Detaining Power, and if provisions of the Convention have otherwise been complied with.

PRESENT TEXT

"A prisoner of war can be validly sentenced only if the sentence has been pronounced by the same courts according to the same procedure as in the case of members of the armed forces of the Detaining Power, and if, furthermore, the provisions of the present Chapter have been observed."

PREVIOUS TEXTSArticle 63 GPW 1929 POW Convention

"Sentence may be pronounced against a prisoner of war only by the same courts and according to the same procedure as in the case of persons belonging to the armed forces of the detaining Power."

BACKGROUND1. Substantive Changes

Article 102 requires that the provisions of the Convention be complied with, as well as procedures applicable to members of armed forces of the Detaining Power, before a prisoner may be validly sentenced.

2. Past U.S. Practices

Rules of Land Warfare, Field Manual 27-10, 1 October 1940, paragraph 136 adopted the language of the 1929 Convention as the regulation to be applied to prisoners held by the U.S.

POSSIBLE QUESTIONS

Q. Is the trial of individuals for war crimes by an international tribunal permissible under this article?

A. In view of the requirement of Article 102 that prisoners of war must be tried by the same courts and according to the same procedure as in the case of members of the armed forces of the Detaining Power and the provisions of Article 85 that persons charged with or convicted of war crimes continue under the protection of the Convention, such persons may be tried by an international tribunal only if the law of the Detaining Power permits such trials of members of its own forces. In most military codes, this is probably not the case.

[See also Possible Questions under Article 85, GPW]

ARTICLE 103SUBSTANCE

Provides that prisoners shall not be confined while awaiting trial unless members of the armed forces of the Detaining Power would be so confined or confinement is necessary in the interests of national security. Requires that time spent in confinement awaiting trial shall be deducted from the sentence, and provisions of Articles 97 and 98 shall apply to prisoner awaiting trial.

PRESENT TEXT

"Judicial investigations relating to a prisoner of war shall be conducted as rapidly as circumstances permit and so that his trial shall take place as soon as possible. A prisoner of war shall not be confined while awaiting trial unless a member of the armed forces of the Detaining Power would be so confined if he were accused of a similar offence, or if it is essential to do so in the interests of national security. In no circumstances shall this confinement exceed three months.

"Any period spent by a prisoner of war in confinement awaiting trial shall be deducted from any sentence of imprisonment passed upon him and taken into account in fixing any penalty.

"The provisions of Articles 97 and 98 of this Chapter shall apply to a prisoner of war whilst in confinement awaiting trial."

PREVIOUS TEXTSArticle 47 GPW 1929

"Judicial proceedings against prisoners of war shall be conducted as rapidly as the circumstances permit; preventive imprisonment shall be limited as much as possible.

"In all cases, the duration of preventive imprisonment shall be deducted from the disciplinary or judicial punishment inflicted, provided that this deduction is allowed for national soldiers."

BACKGROUND

## 1. Substantive Changes

New provisions include (a) a limitation of confinement of prisoners awaiting trial to those cases in which similar confinement

would be provided for a member of the armed forces of the detaining Power; (b) a limitation of pre-trial confinement, to a maximum of three months; and (c) a provision affording certain protections to prisoners undergoing disciplinary punishment are applicable to prisoners in confinement awaiting trial.

## 2. Past US Practices

The United States followed the requirements of GPW 1929.

## 3. Drafting History

In the field of procedure, the regime for preventive detention and the cases to which it applied were defined. Such detention was limited to three months in all cases. Certain delegations would have preferred to retain the possibility of extending this period in the special case of prisoners indicted with offenses against the laws and customs of war, arguing that it was more difficult to try these prisoners in war time than after the end of hostilities. In reply, it was pointed out by virtue of the principle according to which a prisoner shall be tried without delay and shall be considered innocent until he is proved guilty, he must be released if not brought to trial within three months. On the other hand, there was nothing in the Convention to prevent prisoners coming up for trial at a later date they may even be accommodated in other camps to avoid possibility of collusion and the arrangement of false testimony.



ARTICLE 104SUBSTANCE

Requires that notice containing information concerning prisoner, offense, and trial, must be received by the Protecting Power, prisoner, and prisoner's representative at least three weeks before a judicial proceeding.

PRESENT TEXT

"In any case in which the Detaining Power has decided to institute judicial proceedings against a prisoner of war, it shall notify the Protecting Power as soon as possible and at least three weeks before the opening of the trial. This period of three weeks shall run as from the day on which such notification reaches the Protecting Power at the address previously indicated by the latter to the Detaining Power.

"The said notification shall contain the following information:

"(1) Surname and first names of the prisoner of war, his rank, his army, regimental, personal or serial number, his date of birth, and his profession or trade, if any;

"(2) Place of internment or confinement;

"(3) Specification of the charge or charges on which the prisoner of war is to be arraigned, giving the legal provisions applicable;

"(4) Designation of the court which will try the case, likewise the date and place fixed for the opening of the trial.

"The same communication shall be made by the Detaining Power to the Prisoners' representative.

"If no evidence is submitted, at the opening of a trial, that the notification referred to above was received by the Protecting Power, by the prisoner of war and by the prisoners' representative concerned, at least three weeks before the opening of the trial, then the latter cannot take place and must be adjourned."

PREVIOUS TEXTSArticle 60 GPW 1929

"At the opening of a judicial proceeding directed against a prisoner of war, the detaining Power shall advise the representative of the protecting Power thereof as soon as possible, and always before the date set for the opening of the trial.

"This advice shall contain the following information:

- (a) Civil state and rank of prisoner;
- (b) Place of sojourn or imprisonment;
- (c) Specification of the count or counts of the indictment, giving the legal provisions applicable.

"If it is not possible to mention in that advice the court which will pass upon the matter, the date of opening the trial and the place where it will take place, this information must be furnished to the representative of the protecting Power later, as soon as possible, and at all events, at least three weeks before the opening of the trial."

BACKGROUND

### 1. Substantive Changes

The new article provides that unless evidence is submitted at trial that notification was received by the Protecting Power, the prisoner and the prisoners' representative, the trial cannot take place and must be adjourned.

### 2. Past US practices

Paragraph 133, Field Manual 27-10, 1 October 1940, incorporated the language of the 1929 Convention as constituting the regulation applicable to prisoners of war held by the U.S.

### 3. Drafting History

These provisions concerning the notification of judicial proceedings to the Protecting Power are similar in their essentials to those of the 1929 text, except that evidence of receipt of notification by the Protecting Power must be submitted at the opening of a trial. Also, in the future, this notification must be delivered, like the later judgment pronounced by the Court, to the prisoner's representative, in view of the useful role he has played in this matter in the past.

POSSIBLE QUESTIONS

Q. Does this article mean that if no Protecting Power or substitute therefor is in existence a prisoner of war may not be tried for an offense? Can't a state which has reserved on common Article 10/10/10/11 use its refusal to recognize a substitute for a Protecting Power requested by the Detaining Power as a means of frustrating the trial of its personnel in the custody of the Detaining Power?

A. No. It would be unreasonable to conclude that the Convention precludes the maintenance of order amongst prisoners if there is no Protecting Power or substitute in existence. In such an event, the Detaining Power would appear to be under an obligation to transmit the requisite notice to the power upon which the individual depends, whether directly or by communication through a humanitarian organization, such as the I.C.R.C. If it can be shown that the Detaining Power has exhausted all possible means of supplying notice to the other belligerent, it would be reasonable to assume that the trial could then proceed.

ARTICLE 105SUBSTANCE

Provides that prisoners shall be entitled to counsel, notice of charges, time to prepare his case, calling of witnesses, and if necessary, services of an interpreter, and right of appeal. Defines rights of counsel.

PRESENT TEXT

"The prisoner of war shall be entitled to assistance by one of his prisoner comrades, to defense by a qualified advocate or counsel of his own choice, to the calling of witnesses and, if he deems necessary, to the services of a competent interpreter. He shall be advised of these rights by the Detaining Power in due time before the trial.

"Failing a choice by the prisoner of war, the Protecting Power shall find him an advocate or counsel, and shall have at least one week at its disposal for the purpose. The Detaining Power shall deliver to the said Power, on request, a list of persons qualified to present the defence. Failing a choice of an advocate or counsel by the prisoner of war or the Protecting Power, the Detaining Power shall appoint a competent advocate or counsel to conduct the defence.

"The advocate or counsel conducting the defence on behalf of the prisoner of war shall have at his disposal a period of two weeks at least before the opening of the trial, as well as the necessary facilities to prepare the defence of the accused. He may, in particular, freely visit the accused and interview him in private. He may also confer with any witnesses for the defence, including prisoners of war. He shall have the benefit of these facilities until the term of appeal or petition has expired.

"Particulars of the charge or charges on which the prisoner of war is to be arraigned, as well as the documents which are generally communicated to the accused by virtue of the laws in force in the armed forces of the Detaining Power, shall be communicated to the accused prisoner of war in a language which he understands, and in good time before the opening of the trial. The same communication in the same circumstances shall be made to the advocate or counsel conducting the defence on behalf of the prisoner of war.



"The representatives of the Protecting Power shall be entitled to attend the trial of the case, unless, exceptionally, this is held in camera in the interest of State security. In such a case the Detaining Power shall advise the Protecting Power accordingly.

"Every prisoner of war shall have, in the same manner as the members of the armed forces of the Detaining Power, the right of appeal or petition from any sentence pronounced upon him, with a view to the quashing or revising of the sentence or the reopening of the trial. He shall be fully informed of his right to appeal or petition and of the time limit within which he may do so."

#### PREVIOUS TEXTS

#### Article 62 GPW 1929

"The prisoner of war shall be entitled to assistance by a qualified counsel of his choice, and, if necessary, to have recourse to the services of a competent interpreter. He shall be advised of his right by the detaining Power, in due time before the trial.

"In default of a choice by the prisoner, the protecting Power may obtain a counsel for him. The detaining Power shall deliver to the protecting Power, on its request, a list of persons qualified to present the defense.

"Representatives of the protecting Power shall be entitled to attend the trial of the case.

"The only exception to this rule is the case where the trial of the case must be secret in the interest of the safety of the State. The detaining Power should so advise the protecting Power."

#### BACKGROUND

##### 1. Substantive Changes

The new article provides that the Protecting Power shall have one week within which to provide the prisoner with counsel, and gives counsel at least two weeks before the opening of trial to prepare his case and interview witnesses for the defense, as well as confer with the prisoner. Particulars of the charge, as well as documents which are generally communicated to the accused by virtue of the laws in force in the armed forces of the Detaining Power, are to be communicated to the prisoner and his counsel before the trial.



## 2. Past US Practices

Paragraph 135, Field Manual 27-10, 1 October 1940, adopted the text of the 1929 Convention as the regulation applicable to prisoners held by the United States.

## 3. Drafting History

The committee which considered the Article at Geneva felt it advisable to provide for the communication to the accused of the specification or count of the indictment and of the procedure; to give to counsel the facilities necessary to prepare the defense, and to place an obligation on the Detaining Power to find the accused a lawyer if he or the Protecting Power had not selected one. It was finally decided not to lay down specific regulations governing the expenses of defense, as it was considered that the Protecting Power should bear such costs when the defense counsel was chosen by it or by the prisoner, and that the question did not arise in the case of a lawyer selected by the Detaining Power. (See also Comment on Article 84).

ARTICLE 106SUBSTANCE

Establishes right of appeal or petition from any sentence.  
Requires that prisoner be fully apprised of these rights.

PRESENT TEXT

"Every prisoner of war shall have, in the same manner as the members of the armed forces of the Detaining Power, the right of appeal or petition from any sentence pronounced upon him, with a view to the quashing or revising of the sentence or the reopening of the trial. He shall be fully informed of his right to appeal or petition and of the time limit within which he may do so."

PREVIOUS TEXTSArticle 64 GPW 1929

"Every prisoner of war shall have the right of appeal against any sentence rendered with regard to him, in the same way as individuals belonging to the armed forces of the detaining Power."

BACKGROUND

1. Substantive Changes

Provision has been added that the accused be informed of his appellate rights.

2. Past US Practices

Paragraph 137, Field Manual 27-10, 1 October 1940, adopted the language of the 1929 Convention as the regulation applicable to prisoners held by the United States.

ARTICLE 107SUBSTANCE

Provides for communication to Protecting Power and prisoners' representative of any judgment and sentence pronounced on prisoner, indicating if prisoner has right of appeal, and if it has been exercised. When prisoner is finally convicted, or if death sentence is pronounced, Detaining Power shall communicate precise wording of finding and sentence, summarized report of any investigation and trial, and notification of establishment where sentence will be served.

PRESENT TEXT

"Any judgment and sentence pronounced upon a prisoner of war shall be immediately reported to the Protecting Power in the form of a summary communication, which shall also indicate whether he has the right of appeal with a view to the quashing of the sentence or the reopening of the trial. This communication shall likewise be sent to the prisoners' representative concerned. It shall also be sent to the accused prisoner of war in a language he understands, if the sentence was not pronounced in his presence. The Detaining Power shall also immediately communicate to the Protecting Power the decision of the prisoner of war to use or to waive his right of appeal.

"Furthermore, if a prisoner of war is finally convicted or if a sentence pronounced on a prisoner of war in the first instance is a death sentence, the Detaining Power shall as soon as possible address to the Protecting Power a detailed communication containing:

- "(1) the precise wording of the finding and sentence;
- "(2) a summarized report of any preliminary investigation and of the trial, emphasizing in particular the elements of the prosecution and the defense;
- "(3) notification, where applicable, of the establishment where the sentence will be served.

"The communications provided for in the foregoing subparagraphs shall be sent to the Protecting Power at the address previously made known to the Detaining Power."

PREVIOUS TEXTSArticle 65 GPW 1929

"Sentences pronounced against prisoners of war shall be communicated to the protecting Power immediately."

Article 66 GPW 1929

"If the death penalty is pronounced against a prisoner of war, a communication setting forth in detail the nature and circumstances of the offense shall be sent as soon as possible to the representative of the protecting Power, for transmission to the Power in whose armies the prisoner served."

BACKGROUND

## 1. Substantive Changes

The system of notification of judgments to the Protecting Power has been improved. In the future, the detailed notification which under the 1929 Convention was required only for the death penalty, is now applicable to all sentences.

## 2. Past US Practices

Paragraph 138 and 139, Field Manual 27-10, 1 October 1940, adopted the text of the 1929 Convention as the regulations applicable to prisoners of war held by the United States.

## 3. Drafting History

In committee, certain delegations at the Geneva Conference suggested that this notification be sent immediately after the trial in the first court; this proposal was retained, however, only in the case of the death penalty; in all other cases it was deemed preferable that the detailed notification should be sent only when the whole proceedings, including any appeals, are terminated.

To allow for Anglo-American procedure, it was finally decided not to mention in the notification the reasons adduced and to replace them by an outline of the prosecution and the defense. It was further considered advisable that the prisoner should be fully informed of his right of appeal and that the Protecting Power should be informed as soon as possible if the prisoner has exercised such rights.

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ARTICLE 108SUBSTANCE

Requires that sentences pronounced on prisoners be served in same establishments and under same conditions as members of armed forces of the Detaining Power, women prisoners be confined in separate quarters and under supervision of women, and that the provisions of Articles 78 and 126 apply to prisoners sentenced to confinement.

PRESENT TEXT

"Sentences pronounced on prisoners of war after a conviction has become duly enforceable, shall be served in the same establishments and under the same conditions as in the case of members of the armed forces of the Detaining Power. These conditions shall in all cases conform to the requirements of health and humanity.

"A woman prisoner of war on whom such a sentence has been pronounced shall be confined in separate quarters and shall be under the supervision of women.

"In any case, prisoners of war sentenced to a penalty depriving them of their liberty shall retain the benefit of the provisions of Articles 78 and 126 of the present Convention. Furthermore, they shall be entitled to receive and despatch correspondence, to receive at least one relief parcel monthly, to take regular exercise in the open air, to have the medical care required by their state of health, and the spiritual assistance they may desire. Penalties to which they may be subjected shall be in accordance with the provisions of Article 87, third paragraph."

PREVIOUS TEXTSArticle 67 GPW 1929

"No prisoner of war may be deprived of the benefit of the provisions of Article 42 of the present Convention as a result of a sentence or otherwise."



BACKGROUND

## 1. Substantive Changes

The 1929 text contained only general principles concerning the treatment of prisoners of war after sentence had been passed. Article 108 has made up for this deficiency by providing that the prisoner shall have the benefit of at least the minimum conditions in force in penitentiaries. Such conditions apply in all civilized countries, particularly with regard to hygiene, correspondence, medical, or spiritual aid, the application of penalties and the provision of separate accommodation for women.

## 2. Drafting History

Article 42 of the 1929 Convention permitted prisoners to inform military authorities in whose power they were detained of their requests with regard to the conditions of captivity, as well as to address themselves to be representatives of the protecting Powers to indicate to them the points on which they had complaints in regard to the conditions of captivity.

Articles 78 and 126 of the present convention continue the above provisions, adding additional privileges relating to complaints and inspection.

POSSIBLE QUESTIONS

Q. Does Article 108, requiring that prisoners of war be confined in the same establishments as American military personnel serving sentences to confinement, conflict with internal legislation of the United States in view of the provisions of Article 12, Uniform Code of Military Justice, prohibiting confinement of members of the armed forces of the United States in immediate association with enemy prisoners or other foreign nationals not members of the armed forces of the United States?

Article 12, Uniform Code of Military Justice, provides:

"No member of the armed forces of the United States shall be placed in confinement in immediate association with enemy prisoners or other foreign nationals not members of the armed forces of the United States."

A. Article 12 has been interpreted to mean that if members of the armed forces of the United States are separated from enemy prisoners or foreign nationals not members of the armed forces they may be confined in the same jails, prisons, or other confinement facilities. Furthermore, prisoners sentenced to confinement as a result of an executed sentence of a court-martial which includes a bad conduct or dishonorable discharge are not members of the armed forces of the United States, and Article 12 would not be applicable in their case.

Articles 109 and 110 and Annex ISubstance

Require the parties to repatriate all prisoners who are seriously sick and wounded as soon as fit to travel, but not against their will, during hostilities.

Call for efforts by the parties during hostilities, and in cooperation with the neutrals concerned, to arrange accommodations in neutral countries for less seriously sick and wounded. Authorize agreements for direct repatriation or neutral accommodation of able-bodied prisoners who have long been captive.

These articles also establish standards determining which sick and wounded are entitled to direct repatriation or accommodation in a neutral country, and provide for eventual repatriation of the latter if their condition warrants it.

They contemplate special agreements to carry out these provisions. They provide a Model Agreement (Annex I) to be obligatory in absence of such special agreements, and to be applied by Mixed Medical Commissions required to be established by Article 112.

TextArticle 109

"Subject to the provisions of the third paragraph of this Article, Parties to the conflict are bound to send back to their own country, regardless of number or rank, seriously wounded and seriously sick prisoners of war, after having cared for them until they are fit to travel, in accordance with the first paragraph of the following Article.

"Throughout the duration of hostilities, Parties to the conflict shall endeavour, with the cooperation of the neutral Powers concerned, to make arrangements for the accommodation in neutral countries of the sick and wounded prisoners of war referred to in the second paragraph of the following Article. They may, in addition conclude agreements with a view to the direct repatriation or internment in a neutral country of able-bodied prisoners of war who have undergone a long period of captivity.

"No sick or injured prisoner of war who is eligible for repatriation under the first paragraph of this Article may be repatriated against his will during hostilities."

Article 110

"The following shall be repatriated direct:

- (1) Incurably wounded and sick whose mental or physical fitness seems to have been gravely diminished.
- (2) Wounded and sick who, according to medical opinion, are not likely to recover within one year, whose condition requires treatment and whose mental or physical fitness seems to have been greatly diminished.
- (3) Wounded and sick who have recovered, but whose mental or physical fitness seems to have been gravely and permanently diminished.

"The following may be accommodated in a neutral country:

- (1) Wounded and sick whose recovery may be expected within one year of the date of the wound or the beginning of the illness, if treatment in a neutral country might increase the prospects of a more certain and speedy recovery.
- (2) Prisoners of war whose mental or physical health, according to medical opinion, is seriously threatened by continued captivity, but whose accommodation in a neutral country might remove such a threat.

"The conditions which prisoners of war accommodated in a neutral country must fulfil in order to permit their repatriation shall be fixed, as shall likewise their status, by agreement between the Powers concerned. In general, prisoners of war who have been accommodated in a neutral country, and who belong to the following categories, should be repatriated:

- (1) Those whose state of health has deteriorated so as to fulfil the conditions laid down for direct repatriation;
- (2) Those whose mental or physical powers remain, even after treatment, considerably impaired.

"If no special agreements are concluded between the Parties to the conflict concerned, to determine the cases of disablement or sickness entailing direct repatriation or accommodation in a neutral country, such cases shall be settled in accordance with the principles laid down in the Model Agreement concerning direct repatriation and accommodation in neutral countries of wounded and sick prisoners of war and in the Regulations concerning Mixed Medical Commissions annexed to the present Convention."

Previous Texts

Articles 68 and 72 GPW 1929

Article 68: "Belligerents are bound to send back to their own country, regardless of rank or number, seriously sick and seriously injured prisoners of war, after having brought them to a condition where they can be transported.

"Agreements between belligerents shall accordingly settle as soon as possible the cases of invalidity or of sickness, entailing direct repatriation, as well as the cases entailing possible hospitalization in a neutral country. While awaiting the conclusion of these agreements, belligerents may have reference to the model agreement annexed, for documentary purposes, to the present Convention."

Article 72: "Throughout the duration of hostilities and for humane considerations, belligerents may conclude agreements with a view to the direct repatriation or hospitalization in a neutral country of able-bodied prisoners of war who have undergone a long period of captivity."

The 1929 Convention had already made obsolete for the parties in their mutual relations the provisions of the 1864 Geneva Red Cross Convention and its 1906 successor:

1864:

"Art. VI. Wounded or sick soldiers shall be entertained and taken care of, to whatever nation they may belong.

"Commanders-in-chief shall have the power to deliver immediately to the outposts of the enemy soldiers who have been wounded in an engagement when circumstances permit this to be done, and with the consent of both parties.



"Those who are recognized, after their wounds are healed, as incapable of serving, shall be sent back to their country.

"The others may also be sent back, on condition of not again bearing arms during the continuance of the war..."

1906:

"Art. 2. Subject to the care that must be taken of them under the preceding article, the sick and wounded of an army who fall into the power of the other belligerent become prisoners of war, and the general rules of international law in respect to prisoners become applicable to them.

"The belligerents remain free, however, to mutually agree upon such clauses, by way of exception or favor, in relation to the wounded or sick as they may deem proper. They shall especially have the authority to agree:

"1. To mutually return the sick and wounded left on the field of battle after an engagement.

"2. To send back to their own country the sick and wounded who have recovered, or who are in a condition to be transported and whom they do not desire to retain as prisoners.

"3. To send the sick and wounded of the enemy to a neutral state, with the consent of the latter and on condition that it shall charge itself with their internment until the close of hostilities."

#### Background

##### (a) US Experience

During World Wars I and II there were a number of agreements under which the wounded and sick were repatriated, and in World War I these agreements included the stipulation now found in Article 117 that the prisoner may not engage in active military service. ICRC 4/Information Notes (May 1954)8. In World War II mutual repatriation of sick and wounded between the United States and Germany began in 1943 and continued through the conflict. Reporting in July 1944, Mr. Graham Stuart wrote:

"In September 1943 the United States and Germany reached an agreement for the mutual repatriation of seriously sick and seriously wounded prisoners of war...

"The first exchange of seriously sick and seriously wounded prisoners.. between the United States and Germany took place in October 1943, when the United States repatriated 234 seriously sick or seriously wounded prisoners. .. It received, in return, 14 sick or wounded American prisoners of war. In this exchange all the German prisoners who were returned were approved for repatriation by the American medical authorities. They included all who, up until that time, were found eligible for exchange. In the second exchange, which took place in March 1944, 117 Germans were repatriated, in contrast to 36 American prisoners.\* In this case the eligibility for repatriation from the United States was determined by mixed medical commissions composed of two neutral doctors and one doctor appointed by the detaining power.

"Before the second exchange took place the State Department, through the Internees Section of the Special War Problems Division, approached the German Government for a third exchange to take place in Lisbon on April 12, 1944...

"The German Government in its reply stated that all American prisoners of war qualified for repatriation, 36 in number, had already been sent back on the Gripsholm. Therefore, since no others would be available before the mixed medical commission completed its next tour of German war camps on May 9, 1944, it was felt that the proposed exchange should be deferred. The German Government, however, at approximately the same time agreed to further exchanges of seriously sick or seriously wounded prisoners of war and proposed May 2, or a date thereafter, as the exchange date...

"The Governments of the United States and Great Britain jointly proposed.. (and) the German Government accepted ... the date of May 17 and Barcelona as the exchange port. The vessel proposed was the M.S. Gripsholm.

"The number of Germans repatriated on this voyage of the Gripsholm, which left New York on May 2, 1944, was 517 sick and wounded and surplus protected personnel in British custody and 340 sick and wounded and protected personnel in United States custody, making a total of 857. The number of Allied sick and wounded brought back from Germany was over 1,000, of whom 65 were Americans

"The United States made similar proposals for the exchange of seriously ill and wounded prisoners and surplus protected personnel to the Rumanian and Bulgarian Governments, which are parties to the Geneva Prisoners of War Convention and the Geneva Red Cross Convention. The Japanese Government, which is a party to the Geneva Red Cross Convention, agreed in principle to the United States Government's proposal for the repatriation of protected

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(\*including, it seems "surplus protected personnel")

personnel. It sent back a small number of American military nurses at the time of the first civilian exchange but none thereafter. The Japanese Government, after due consideration, stated that it could not make a favorable response to the United States proposals for the reciprocal application of the model agreement and the repatriation of seriously sick and seriously wounded prisoners of war under the Geneva Prisoners of War Convention." XI Department of State Bulletin (July 1944) 73-74.

Two further exchanges took place with Germany in 1944 and 1945. Although civilians (and 5 Navy nurses) were exchanged with Japan in 1942 and 1943, no sick and wounded were covered.

During World War II, it was not found practicable to arrange for accommodation of the less seriously wounded and sick or the long-term prisoner in neutral countries. ICRC II The Geneva Conventions of August 12, 1949. Analysis for the Use of National Red Cross Societies (1950) 21.

In the Korean conflict, it was only a short time prior to the Armistice that the Communist side finally agreed to mutual direct repatriation of the wounded and sick.

The United States and the Korean Problem - Documents 1943-1953, (S. Doc 74, 83rd Cong.), 77 ff.

(b) Implementing the Obligations

The 1929 Convention imposed the same general obligations as the 1949 Convention, but did not make the standards of the model agreement effective in the event the parties failed to reach agreement on the categories of sick and wounded to be repatriated. The 1949 Convention itself provides the standards which are controlling in the absence of special agreement. IIA Fin. Rec. 573. The prisoner of war under Articles 109 and 110 (or under Article 118) is not to be deprived of the benefits of repatriation (or, under Article 118, a plan of release and repatriation) because the parties may fail to agree on the details of its execution. Difficulty in reaching agreement would no longer seem to be justification for delay in repatriating the seriously sick and wounded.

The 1949 Convention establishes the principle that the need of the prisoners--the degree of their incapacity--rather than the principle of man for man exchange--is the basis for carrying out repatriation of the sick and wounded.

Annex I to the Convention spells out in more detail than does Article 110 the standards for ascertaining whether a prisoner's condition is such as to entitle him to direct repatriation or make him eligible for accommodation in a neutral country. They are written by medical specialists to be administered by those medical specialists in the services of the parties to the conflict and those serving on the Mixed Medical Commissions.



(c) The Prisoner's Option

The provision requiring that the detaining power continue to hold and care for a sick and wounded prisoner who does not want to be repatriated was strongly opposed by a number of delegations at Geneva. In plenary, Mr. Gardiner of the UK, objected as follows:

"We will ask that Article 100 (now 109) be put to the vote by paragraphs in order that we may invite the Conference to vote against the last paragraph. We believe that, though this paragraph was inspired by the best of motives, it in fact introduces a wrong principle, the principle that an alien who has been held in a foreign country for reasons for the security of that country, should be able to insist on remaining in that country, when under the Convention he no longer ought to do so but ought to be returned to his own country. We rest our objection on the fact that experience has shown that this kind of provision, had it been in operation, would have compelled us to retain for many months, indeed for years, in Britain aliens whose motives for staying have no connection with any motive that has been advanced by those who advocate this particular paragraph... The justification has been that there are some captured as prisoners of war who, if returned to their own country should have to fear persecution. I suggest that a country should be allowed to decide for itself whether it will give refuge and asylum to a foreigner who has come to that country not by a voluntary act of his own: for instance, when a Detaining Power is satisfied that he had good grounds for staying, but there should not be an obligation on the Detaining Power to keep a prisoner of war who, as the Convention itself says, ought no longer to be a prisoner of war. I invite the Conference to vote against the last paragraph of Article 100."  
IIB Fin Rec 313. (Underscoring supplied).

Despite objections, the present text carried 21 in favor, 17 opposed, 3 abstaining. IIB Fin. Rec. 343. It is of particular importance to a proper understanding of Article 118 to recognize that in their debates on Article 109, the Delegates made it clear that they started from the assumption that notwithstanding the categorical duty of repatriating sick and wounded imposed by Article 109, paragraph 1, a detaining power would always have the privilege of granting asylum in proper cases. What the final paragraph added, and what was objected to, was a duty to grant asylum.

ARTICLE 111SUBSTANCE

Requires joint effort of parties to conflict and a neutral to arrange accommodation for prisoners in the neutral country, regardless of the condition of their health.

PRESENT TEXT

"The Detaining Power, the Power on which the prisoners of war depend, and a neutral Power agreed upon by these two Powers, shall endeavor to conclude agreements which will enable prisoners of war to be interned in the territory of the said neutral Power until the close of hostilities."

PREVIOUS TEXTS

None

BACKGROUND

Article 111 was proposed by the Canadian Delegation at Geneva, which pointed out that the Stockholm Conference had decided in favor of such a provision. IIA Fin Rec., 292. It was adopted unanimously, with no substantive discussion, upon the report of a drafting committee which recorded that the Article aimed "at insuring a reasonable standard of living for all prisoners of war, in the event of the Detaining Power being unable, for any reason, to comply with the minimum standards regarding the treatment of prisoners of war laid down in the Convention." IIA Fin Rec. 365, 374.



ARTICLE 112 and ANNEX IISUBSTANCE

Requires establishment of Mixed Medical Commissions composed of one appointee of the detaining power and two from a neutral country, ordinarily appointed by the I.C.R.C. with the approval of the parties to the conflict concerned.

Directs that the Commissions make all appropriate decisions regarding the sick and wounded, which must be carried out in 3 months by the Detaining Power; permits the Detaining Power to repatriate those its doctors deem manifestly seriously sick or wounded without need for examination by a Commission.

PRESENT TEXT

"Upon the outbreak of hostilities, Mixed Medical Commissions shall be appointed to examine sick and wounded prisoners of war, and to make all appropriate decisions regarding them. The appointment, duties and functioning of these Commissions shall be in conformity with the provisions of the Regulations annexed to the present Convention.

"However, prisoners of war who, in the opinion of the medical authorities of the Detaining Power, are manifestly seriously injured or seriously sick, may be repatriated without having to be examined by a Mixed Medical Commission."

PREVIOUS TEXTSArticle 69 GPW 1929"Article 69

"Upon the outbreak of hostilities, belligerents shall come to an agreement to name mixed medical commissions. These commissions shall be composed of three members, two of them belonging to a neutral country and one appointed by the detaining Power; one of the physicians of the neutral country shall preside. These mixed medical commissions shall proceed to the examination of sick or wounded prisoners and shall make all due decisions regarding them.

"Decisions of these commissions shall be by majority and carried out with the least possible delay."

BACKGROUND

The second paragraph employs conditional language to avoid conflict with or unnecessary repetition of the third paragraph of Article 109, which provides against repatriating a sick or wounded prisoner against his will. IIA Fin Rec 374, 375.

Annex II is new and results from the recommendations of study meetings of former neutral members of World War II Mixed Medical Commissions held in 1945 and 1946. I.C.R.C., Rapport sur les travaux de la Reunion de membres neutres des Commissions Medicales Mixtes (Geneva 1945); I.C.R.C., Rapport de la Sous-Commission constitue pour etudier la revision de l'Accord-type annexe a la Convention du 27 Juillet 1929 ... (Geneva, 1946). Their recommendations were summarized and presented by the I.C.R.C. to the Commission of Experts at Geneva in 1947. I.C.R.C., II Preliminary Documents submitted by the I.C.R.C. to the Commission of Government Experts 177, ff. The text developed by the Government experts and the 1948 Red Cross Conference at Stockholm appears to have given rise to no significant difficulties and was adopted (with drafting changes) at Geneva. IIA Fin Rec 292, 365, 374, 375; IIB Fin Rec 314.

Annex II comprises 14 articles. Establishing Commissions of three members (one appointed by the detaining Power, two by the I.C.R.C. with consent of the parties, or by the Protecting Power if the I.C.R.C. can not appoint), it gives the neutral members status independent of the parties, which must give them all necessary facilities. A Commission must examine the prisoners designated in Article 113 and pass on their eligibility for repatriation or accommodation by majority vote. Decisions must be carried out by the Detaining Power within 3 months. Commissions are to be established promptly, continue permanently, and visit each camp at least every six months. Where neutral members are not available, a Detaining Power is required, in agreement with the Protecting Power, to establish a Medical Commission to perform the same functions.

World War II experience was summarized by the I.C.R.C.:

"Mixed Medical Commissions

"British and United States PW in Germany, as well as PW in Allied hands, could present themselves before the Mixed Medical Commissions which visited the camps at regular intervals. Various methods were used by the Medical Section in requesting the Detaining Power to present sick PW to these Commissions. These requests were based on an application from any of the following:

- "(1) Sick or wounded PW.
- "(2) PW medical officer treating the case.
- "(3) Camp leader.
- "(4) PW's next of kin.
- "(5) National Red Cross.
- "(6) Power of origin.
- "(7) Requests were also based on results of medical enquiries carried out by the Medical Section.

"Lists of the sick were drawn up regularly; one copy was sent to the head of the Medical Commission, one to the Government of the Detaining Power, and one to the delegation of the I.C.R.C. in the country where the Commission was due to carry on its work, in order that a delegate could verify if the man had really been examined.

"The Medical Section was however, despite numerous representations made by the I.C.R.C., never able to verify officially that the decisions taken by the Medical Commissions were put into effect. Very often men were kept in camps, when, as they claimed, they had been passed for repatriation. The I.C.R.C. had occasion to establish that their claims were sometimes justified; in that event, it took action with the Detaining Power." I.C.R.C. II Report...on its Activities during the Second World War (Geneva, 1948), 296-297.

It will be observed that the three month period for carrying out recommendations of the Mixed Medical Commissions was written in to cover unsatisfactory World War II experiences.

ARTICLE 113SUBSTANCE

Establishes three additional categories of prisoners entitled to present themselves to the Mixed Medical Commissions for examination. Proposals may be made by:

1. The physician or surgeon practicing in the camp and a conational or ally of the prisoner.
2. The prisoner's representative.
3. The power on which he depends, or an organization assisting prisoners recognized by such power.

Provides that others may be examined after those so proposed and that the physician or surgeon referred to and the prisoners' representative have the right to be present at the examination.

PRESENT TEXT

"Besides those who are designated by the medical authorities of the Detaining Power, wounded or sick prisoners of war belonging to the categories listed below shall be entitled to present themselves for examination by the Mixed Medical Commissions provided for in the foregoing Article:

- "(1) Wounded and sick proposed by a physician or surgeon who is of the same nationality, or a national of a Party to the conflict allied with the Power on which the said prisoners depend, and who exercises his functions in the camp.
- "(2) Wounded and sick proposed by their prisoners' representative.
- "(3) Wounded and sick proposed by the Power on which they depend, or by an organization duly recognized by the said Power and giving assistance to the prisoners.

"Prisoners of war who do not belong to one of the three foregoing categories may nevertheless present themselves for examination by Mixed Medical Commissions, but shall be examined only after those belonging to the said categories.

"The physician or surgeon of the same nationality as the prisoners who present themselves for examination by the Mixed Medical Commission, likewise the prisoners' representative of



the said prisoners, shall have permission to be present at the examination."

PREVIOUS TEXTS

Article 70 GPW 1929

"Article 70. Besides those who designated by the camp physician, the following prisoners of war shall be inspected by the mixed medical Commission mentioned in Article 69, with a view to their direct repatriation or their hospitalization in a neutral country:

- "(a) Prisoners who make such a request directly of the camp physician;
- "(b) Prisoners who are presented by the agents provided for in Article 43, acting on their own initiative or at the request of the prisoners themselves;
- "(c) Prisoners who have been proposed by the Power in whose armies they have served or by an aid Society duly recognized and authorized by that Power."

BACKGROUND

Like Articles 109-112 (Q.V.), Article 113 reflects the recommendations and experience of the neutral members of the Mixed Medical Commissions operating in World War II.

Past US Practice

War Department regulations governing the treatment of prisoners of war during World War II were in substantial accord with the requirements of the present Article (TM 19-500, Chap. II, para. 13).



ARTICLE 114SUBSTANCE

Post-capture accidents, but not self-inflicted injuries, entitle prisoners of war to the benefits of repatriation or accommodation.

PRESENT TEXT

"Prisoners of war who meet with accidents shall, unless the injury is self-inflicted have the benefit of the provisions of this Convention as regards repatriation or accommodation in a neutral country."

PREVIOUS TEXTSArticle 71 GPW 1929

"Prisoners of war who are victims of accidents in connection with work, except those voluntarily injured, shall enjoy the benefit of the same provisions, as far as repatriation or possible hospitalization in a neutral country are concerned."

BACKGROUND

Omission of "at work" from the 1949 text was on U. S. initiative.  
II A Fin Rec 293, 365, 374.

## ARTICLE 115

SUBSTANCE

Requires that benefits of repatriation or accommodation extend to prisoner even if under disciplinary punishment, while authorizing retention of prisoners for judicial prosecution or completion of judicial punishment. Requires notice to other side of those so retained.

PRESENT TEXT

"No prisoner of war on whom a disciplinary punishment has been imposed and who is eligible for repatriation or for accommodation in a neutral country, may be kept back on the plea that he has not undergone his punishment.

"Prisoners of war detained in connection with a judicial prosecution or conviction and who are designated for repatriation or accommodation in a neutral country, may benefit by such measures before the end of the proceedings or the completion of the punishment, if the Detaining Power consents.

"Parties to the conflict shall communicate to each other the names of those who will be detained until the end of the proceedings or the completion of the punishment."

PREVIOUS TEXTSArticle 53 GPW 1929

"No prisoner of war on whom a disciplinary punishment has been imposed, who might be eligible for repatriation, may be kept back because he has not undergone the punishment.

"Prisoners to be repatriated who might be threatened with a penal prosecution may be excluded from repatriation until the end of the proceedings and, if necessary, until the completion of the punishment; those who might already be imprisoned by reason of a sentence may be detained until the end of their imprisonment.

"Belligerents shall communicate to each other the lists of those who may not be repatriated for the reasons given in the preceding paragraph."

BACKGROUND

A comparable exception for prisoners undergoing prosecution or punishment for other than disciplinary offenses will be found in Article 119 where the issue is repatriation at the end of hostilities. The United Kingdom proposed and Committee II at Geneva, in 1949, adopted an amendment to Article 115 that "Prisoners of war prosecuted for an offence for which the maximum penalty is not more than ten years or sentenced to less than ten years shall similarly not be kept back." II A Fin Rec 336-337. The USSR was strongly opposed, and the present text was restored in plenary. II B Fin Rec 343.

PAST UNITED STATES PRACTICE

In World War II, a number of German prisoners of war, serving sentences for post-capture offenses, were retained by the United States after repatriation of other German prisoners had been effected. By the end of 1948, however, even these prisoners had been repatriated to Germany. No prisoners were retained for completion of purely disciplinary punishments.

ARTICLE 116

SUBSTANCE AND TEXT

"The cost of repatriating prisoners of war or of transporting them to a neutral country shall be borne, from the frontiers of the Detaining Power, by the Power on which the said prisoners depend."

PREVIOUS TEXTS

Article 73 GPW 1929

"The expenses of repatriation or of transportation to a neutral country of prisoners of war shall be borne, from the frontiers of the Detaining Power, by the Power in whose armies the prisoners have served."

BACKGROUND

Article 116 applies the rule of Article 118, paragraph 4(a), without regard to the existence of a common frontier.

ARTICLE 117

SUBSTANCE AND TEXT

"No repatriated person may be employed on active military service."

PREVIOUS TEXTS

The principle of Article 117 runs back to Article 105 of the Lieber Code of 1863 and to the Geneva Red Cross Convention of 1864. The latter provided in Article VI that wounded or sick

"...who are recognized, after their wounds are healed, as incapable of serving, shall be sent back to their country.

"The others may also be sent back, on condition of not again bearing arms during the continuance of the war...."

Article 117 replaces Article 74 GPW 1929:

Article 74

"No repatriated person may be utilized in active military service."

BACKGROUND

In World War II it was found that Article 74 of the 1929 Convention was interpreted and applied in different ways. I.C.R.C. Rapport sur les travaux de la reunion des membres neutres des Commissions Medicales Mixtes (Geneva 1945), 33. Efforts to achieve greater precision in preparing the Geneva Conventions of 1949 were not successful.

"Active military service" is a term which has successfully defied precise definition. At Geneva in 1949 the Drafting Committee recommended striking "active" to extend the prohibitions to all types of military service. II A Fin Rec 365. The United States, United Kingdom and France opposed this change and the original wording, including "active", was retained by Committee II by a vote of 13-12-3, id 374, 375. The Report of Committee II noted that retention of "active" took account of the fact that "it is usual for many repatriated prisoners of war to depend on the administrative service of the armies." ID., 573. Performance of medical services is not precluded. Combat service is clearly precluded.



Since repatriation or accommodation of prisoners other than the seriously sick and wounded is dependent on the ability of the parties to reach agreement, it is not lightly to be assumed to be the intention of the Convention to handicap the accomplishment of the major objective of repatriation by precluding agreements for repatriation which might envisage the employment of wounded and sick, or long-term prisoners when physically recovered, in active military service.

Protection of the seriously sick and wounded against active military service is a benefit conferred by the Convention that continues after they have been repatriated and are otherwise removed from the administrative and other arrangements applicable to prisoners of war. Certainly a former detaining Power is free to press under Article 11 for application of Article 117. Practical and technical difficulties, however, attend a construction of Article 8 as directly covering the protection of repatriated persons.

## ARTICLE 118

SUBSTANCE

Requires prompt execution of a plan of release and repatriation at end of active hostilities, with notice to prisoners; prescribes basis for allocating costs.

PRESENT TEXT

"Prisoners of war shall be released and repatriated without delay after the cessation of active hostilities.

"In the absence of stipulations to the above effect in any agreement concluded between the Parties to the conflict with a view to the cessation of hostilities, or failing any such agreement, each of the Detaining Powers shall itself establish and execute without delay a plan of repatriation in conformity with the principle laid down in the foregoing paragraph.

"In either case, the measures adopted shall be brought to the knowledge of the prisoners of war.

"The costs of repatriation of prisoners of war shall in all cases be equitably apportioned between the Detaining Power and the Power on which the prisoners depend. This apportionment shall be carried out on the following basis:

- "(a) If the two Powers are contiguous, the Power on which the prisoners of war depend shall bear the costs of repatriation from the frontiers of the Detaining Power.
- "(b) If the two Powers are not contiguous, the Detaining Power shall bear the costs of transport of prisoners of war over its own territory as far as its frontier or its port of embarkation nearest to the territory of the Power on which the prisoners of war depend. The Parties concerned shall agree between themselves as to the equitable apportionment of the remaining costs of the repatriation. The conclusion of this agreement shall in no circumstances justify any delay in the repatriation of the prisoners of war."

PREVIOUS TEXTS

Article 118 replaced part of Article 75 of the 1929 Convention:

## Article 75 of 1929 POW Convention

"When belligerents conclude an armistice convention, they shall normally cause to be included therein provisions concerning the repatriation of prisoners of war. If it has not been possible to insert in that convention such stipulations, the belligerents shall, nevertheless, enter into communication with

each other on the question as soon as possible. In any case, the repatriation of prisoners shall be effected as soon as possible after the conclusion of peace ..." (Omitted portion is predecessor of present Article 119)

Article 118 complements Article 20 of the Regulations annexed to Ch. II of the 1899 and 1907 Hague Conventions:

#### Article 20 of Hague Regulations

"After the conclusion of peace, the repatriation of prisoners of war shall take place as speedily as possible."

#### BACKGROUND

##### I. Past Practice of the United States

##### (a) Principle of release and repatriation

The United States has always supported the principle of release and repatriation of prisoners of war. Thus, Article VII of the Treaty of Peace between the United States and Great Britain of 1783 provided, inter alia, "All prisoners on both sides shall be set at liberty". The United States is a party to the Hague Conventions of 1899 and 1907 where the principle first received wide express acceptance in positive international law. The text of the Regulations on land warfare of these Conventions provided, in Article 20, "After the conclusion of peace, the repatriation of prisoners of war shall take place as speedily as possible".

##### (b) Asylum for prisoners of war

A compelling statement on the applicability of asylum in wartime where conditions of life on the side of one of the belligerents make asylum an important factor was written in 1863 into the "Instructions for the Government of the Armies of the United States in the Field" by the great Francis Lieber. Articles 42 and 43 provided:

"42. Slavery, complicating and confounding the ideas of property, (this is of a thing,) and of personality, (that is of humanity,) exists according to municipal or local law only. The law of nature and nations has never acknowledged it. The digest of the Roman law enacts the early dictum of the pagan jurist, that 'so far as the law of nature is concerned, all men are equal.' Fugitives escaping from a country in which they were slaves, villains, or serfs, into another country, have, for centuries past, been held free and acknowledged free by judicial decisions of European countries, even though the municipal law of the country in which the slave had taken refuge acknowledged slavery within its own dominions.

"43. Therefore, in a war between the United States and a belligerent which admits of slavery, if a person held in bondage by that belligerent be captured by or come as a fugitive under the protection of the military forces of the United States, such person is immediately entitled to the rights and privileges of a freeman. To return such person into slavery would amount to enslaving a free person, and neither the United States nor any officer under their authority can enslave any human being. Moreover, a person so made free by the law of war is under the shield of the law of nations, and the former owner or State can have, by the law of postliminy, no belligerent lien or claim of service."

Francis Lieber's code has been replaced, and the provisions above quoted have been dropped out, but it is significant of the general position of the United States regarding this problem in international law that not long before the United States entered into the multilateral negotiations resulting in the Geneva Conventions of 1949, the Judge Advocate General of the Army ruled, in the case of a prisoner of World War II, that the general obligation of repatriation in customary law, in the Hague Conventions and in the 1929 Geneva Convention did not prevent release of a prisoner of war who sought not to be made to return home. In so doing, he reviewed past cases, noting that there is no duty upon a detaining power to compel the return of a deserter or a prisoner seeking asylum within its land (Memorandum of the Office of the Judge Advocate General, 15 January 1945). Similarly, according to the American authority, Flory, and others, a detaining power is not required to compel the return of deserters, since humanitarian considerations argue against such forcible repatriation. (Flory, Prisoners of War (1942) p. 29-30; Rolin, Le Droit Moderne de la Guerre 384 (1920); II Lauterpacht's Oppenheim; 6th Ed. 1944, p. 213)

Although superseded by the armistice agreement, the Prisoner of War Agreement signed at Berne, November 11, 1918 by the United States and Germany is of interest in that Article 18 provided (see American Journal of International Law, 13, Official Documents 1, 6 (1919)):

"Prisoners of war eligible for ... repatriation under Articles 1 to 7, inclusive, may renounce their rights thereto, in which case a written declaration of the fact must be made.

"In doubtful cases either of the two Governments may request confirmation of the renunciation through a representative of the Protecting Power, or, in the case of prisoners of war interned in a neutral country, through the government of the latter country."

Because the United States played a leading role in the Chaco Conference of 1935-36, the application of the principle of asylum to prisoners of war of the Chaco conflict is both a recent



and important example of United States practice. At the conclusion of the Chaco hostilities a plan of repatriation was carried out under the supervision of a Special Repatriation Commission constituted by the Chaco Peace Conference.

The legal basis of the Commission's action was as follows: On June 12, 1935, as the result of Inter-American mediation, Bolivia and Paraguay signed a protocol, paragraph 4 of which provided that the peace conference which it was proposed to call should "promote, when it is deemed opportune, agreement between the parties with regard to the exchange and repatriation of prisoners, bearing in mind the practices and principles of international law." Paraguay and Bolivia ratified the Protocol on June 20 and 21, respectively.

A Special Repatriation Commission was constituted by agreement and adopted its own rules of procedure, article 20 of which provided: "Once liberated and having arrived in the country of transit, the prisoners who seek to express their desire not to return to their country shall make an appropriate declaration before competent authority, in accordance with instructions laid down by the Special Repatriation Commission." (Translation.)

Again on July 25, 1936, the Special Repatriation Commission in making provision for prisoners surrendering or captured during the period in which the Commission was in operation reaffirmed the same principle in the following more particularized manner:

"7. In the presence of the delivering and receiving officers, the corresponding authority of the third country shall ask the prisoners present 'if there is someone who voluntarily wishes to interrupt his trip to Bolivia (or Paraguay), to return and settle in Paraguay (or Bolivia)'. In the case of an affirmative reply, a certificate shall be drawn up in three copies, one for each of the authorities mentioned and signed by them; the officer who effected the delivery shall likewise conduct the interested persons back to his country."

It was pursuant to these provisions then that out of a total of 2,578 Paraguayan prisoners in Bolivian hands, 6 were freed in Argentina and permitted not to return to Paraguay, while out of a total of 17,174 Bolivian prisoners in Paraguayan hands, 75 prisoners were freed in Argentina and not required to return to Bolivia.

## II. World War II Experience and the Conference of Government Experts at Geneva, 1947

### (a) Speeding up release and repatriation

World War II experience showed that a duty to release and repatriate, if deferred to the conclusion of a peace treaty, could be indefinitely deferred. At the Conference of Government



Experts called by the International Committee of the Red Cross at Geneva in 1947 to consider revision of the 1929 Prisoner of War Convention and other conventions, the Red Cross urged acceptance of the principle that at the end of hostilities the military justification for holding prisoners ceased. The Experts considered alternative methods of meeting the administrative problems of repatriation. The resulting agreed text accepted the end of hostilities as the cut-off date, and, while leaving details to be worked out by agreement between the belligerents, imposed on each detaining power a duty of independent action to effect release and repatriation as quickly as possible. At the suggestion of the International Committee of the Red Cross, it was required that measures adopted by a detaining power be brought to the knowledge of the prisoners. The text as submitted to National Red Cross societies and governments, with a view to adoption by the XVII International Red Cross Conference at Stockholm in 1948, read:

"ARTICLE 108. Prisoners of war shall be liberated and repatriated as quickly as possible after the close of hostilities, account being taken of the material means the Detaining Powers may have for the execution of these operations.

"In the absence of stipulations to this effect in any agreement passed between the belligerents with a view to putting an end to hostilities, or failing any agreement of this kind, each of the Detaining Powers shall draw up a repatriation scheme in conformity with the principle laid down in the preceding Section.

"In both cases, the measures adopted shall be brought to the knowledge of the prisoners of war." (XVII International Red Cross Conference, Draft Revised or New Conventions for the Protection of War Victims, ICRC, Geneva, May 1948)

(b) Other problems, including forced repatriation

In the proceedings of Committee II of the Conference of Government Experts, various other points were discussed in connection with article 118. The ICRC in its "Preliminary Documents", submitted to the Experts, in addition to the suggestions above referred to, made the following points:

1. Detaining states sometimes unfairly discriminated among prisoners in choosing the first to return.

2. It happened fairly often that POW were repatriated against their will. This led to numerous suicides, as POW were sometimes afraid, with or without valid reason, to return home. Certain States decided not to repatriate POW who had good reasons for not going home; in other cases, they disregarded such wishes.

3. Many PoW asked to be repatriated, not to their country of origin, but to that where they resided before their enlistment and where their next-of-kin generally still lived. It is obviously difficult to provide for the repatriation of PoW to another country than that of the army in which they served. It should, however, be noted that some belligerents agreed to exceptions in particularly deserving cases ...

4. Sometimes a detaining state has released prisoners only to detain them again on their return home.

The Experts found no way to deal with the fourth point. As to the other three, they preferred that there should be latitude for special arrangements where such problems might arise. (ICRC, Report of the Government Experts on Prisoners of War Convention (Geneva 1947), 257).

The Summary Record of the Meeting of Committee II of the Conference of Government Experts on April 21, 1947 shows that the Experts decided not to prohibit forced repatriation and to leave it to the discretion of the detaining power what disposition to make of a prisoner who, because a deserter, or for other reasons, might wish to go elsewhere than home. The record shows that the United States opposed anything that might provide an escape clause placing the principle of repatriation in jeopardy, that various representatives emphasized that detaining powers could not be required to permit prisoners to stay--their immigration laws would stand in the way, for one thing--that detaining powers had met and solved the problem at their option in the past and should be permitted to continue to do so. (Id, PV, Commission II, Vol. III, Tome 2, pp 340-342).

### III. XVII International Red Cross Conference

Improvements in wording, and the addition of a rule for allocating expenses were approved at the Red Cross Conference in Stockholm in 1948. The annotated text speaks for itself:

"ARTICLE 108. Prisoners of war shall be released and repatriated without delay (1) after the cessation of active hostilities (2).

"In the absence of stipulations to the above effect in any agreement concluded between the belligerents with a view to the cessation of hostilities, or failing any such agreement, each of the Detaining Powers shall itself establish and execute without delay a plan of repatriation in conformity with the principle laid down in the foregoing paragraph.

"In either case, the measures adopted shall be brought to the knowledge of the prisoners of war.

"The costs of repatriation shall be borne by the Power on which the prisoners of war depend, from the frontiers of the Detaining Power, if the two Powers are contiguous. In any other case, such costs shall be apportioned equitably, in conformity

with the model agreement (3) annexed to the present Convention, failing any special agreement between the Powers concerned.

- "(1) The words 'as quickly as possible' have been deleted.
- "(2) The words 'account being taken ... these operations' have been deleted.
- "(3) The Conference expressed the recommendation that the International Committee should undertake to draft such a Model Agreement, to be submitted to the Diplomatic Conference."

(ICRC, Revised and New Draft Conventions for the Protection of War Victims, Revised Translation, Geneva, 1948, at p. 94)

#### IV. 1949 Diplomatic Conference at Geneva

Article 118 (then 108) was referred at the Diplomatic Conference called by the International Red Cross at Geneva in 1949 to Committee II and in turn referred to the Special Committee. The latter discussed the article on June 3 and 14 and adopted a text. On June 16 Committee II referred Austria's proposal for a new Article 108A to the Special Committee, which rejected it on June 17. On June 30 Committee II adopted the Special Committee's text and it was approved by the Plenary on July 28.

##### (a) Delayed repatriation

The United Kingdom pressed for an amendment which would have permitted the detaining power to delay repatriation for "adequate reasons". In the face of strong opposition, notably from the United States and the USSR, the United Kingdom withdrew its proposal (Diplomatic Conference of Geneva, 1949, IIA Final Record 449, 450; Id., III Final Record 88 (Annex 175)).

##### (b) Apportioning expenses

There was considerable disagreement on the matter of apportioning expenses involved in sending prisoners back. The Soviet Union felt strongly that a detaining power should not have to pay more than the cost to its own borders. The present text is the result of a compromise solution, opposed by the USSR, that was worked out by the Special Committee. (Id., IIA Final Record 450-454, 337-338; Id., IIB Final Record 316-318)

##### (c) Requirement of voluntary repatriation

The Austrian delegation in effect renewed discussion of the question put by the ICRC at the Conference of Government



Experts -- should a detaining power be required to accede to a prisoner's desire not to be sent to the country of the army in which he served? In the end, an Austrian amendment to require some compliance with a prisoner's desire was rejected by a large majority (Id., IIA Final Record, 462)

(d) Recognition of applicability of asylum

Article 118 was subsequently adopted in plenary in its present form. An aspect of the legislative history of present Article 109 is important to an appreciation of the fact that the plenary meeting which adopted present Article 118 correctly recognized that a prisoner of war who might be entitled to repatriation could lawfully seek and receive asylum from the detaining power.

The 17th meeting of the plenary took place July 28, 1949. (Id., IIB Final Record 3120318). Before adopting Article 118, the meeting first adopted Articles 76-98 with little or no discussion (Id., IIB Final Record 312), and then discussed Article 109 (Article 100 of the draft as then numbered), and the United Kingdom's objection to the third paragraph of the working draft which provided that no sick or injured prisoner of war eligible for repatriation could be repatriated against his will during the course of hostilities. The preceding paragraphs had imposed a duty of repatriating seriously sick or wounded prisoners during hostilities.

The argument involved two questions. The first was whether, without the provision in the third paragraph forbidding repatriation of a sick or wounded prisoner of war against his will, the detaining power could, despite the obligation imposed in the Convention to repatriate such persons, refrain from doing so if satisfied that the prisoner had good grounds for staying. A second question was whether, if the detaining power could do so, it would do so.

The United Kingdom and France were very clear indeed on the first point: The detaining power could choose not to repatriate them if there were good grounds for not so doing. Their opposition (and the vote was very close) did not even suggest that they might be wrong. If any appreciable number of delegates had conceived of the Convention as intended to override the customary privilege of granting asylum, this was certainly the time one would have expected them to show it. They did not. Instead, the Representative of Belgium referred to experiences in World War II where, under the guise of repatriation, the detaining power forced prisoners back to become collaborationists in homelands occupied by the detaining power itself. His answer to the United Kingdom Delegate was not that the Convention would prevent a voluntary grant of asylum. His answer was directed to the second question--what might the detaining power choose to do. He feared that the detaining power might not choose to grant asylum unless the Convention forced it to do so.

There would indeed have been a very basic legal and moral inconsistency had the opponents of the United Kingdom's and France's attempt to deny a controlling voice to the sick prisoner's option also opposed their construction of Article 109 as permitting the grant of refuge or asylum to a prisoner of war otherwise eligible for repatriation under the terms of Article 109. Basically, the Belgian position, for example, was that the sick prisoner should not be forced to go to work for a government which he no longer supported as the real government of his country, at the decision of a detaining power which controlled that government. In their view, where a detaining power for selfish reasons might be led to deny asylum to a prisoner, it should be forced to grant it, and to give him at least the basic protections enjoyed by all prisoners under the Convention. This Belgian position was clearly predicated on the principle of asylum and its legal applicability to the prisoner of war and called for an extension of this principle. The position of the United Kingdom and France was equally predicated on the principle and legal applicability of asylum but differed in that they insisted on leaving unfettered the power to refuse asylum. On the issue of the existence and applicability of the right to grant asylum to a prisoner of war otherwise eligible for repatriation under Article 109, it is clear from the record and on reason that there was no room for disagreement.

#### V. Subsequent Events

As is developed in a separate paper, the United States, as Unified Command, with the support of the General Assembly of the United Nations successfully upheld the legality of affording asylum to prisoners of war in the Korean conflict. Despite the strenuous assertion of the USSR in the General Assembly that Articles 118 and 7 foreclosed any course other than the repatriation of all POW'S, the Communist side finally agreed to Armistice Terms leaving the choice up to the individual POW, with safeguards of impartial supervision.



POSSIBLE QUESTIONS

1. Q - Does Article 118 require that a prisoner who strongly objects to being sent back must be repatriated against his will?

A - NO. Article 118 did not change existing law and practice in this respect. Under the 1949 Convention, as under prior conventions, a detaining power may grant asylum to a prisoner of war.

2. Q - Must a detaining power always respect a prisoner's claim to asylum?

A - NO. The detaining power is under no obligation whatsoever to grant asylum. It decides for itself. It has an option to respect a prisoner's claim to asylum. Article 109 of the Prisoners of War Convention of 1949 imposes a duty to respect this claim only in the case of sick and wounded prisoners of war, during hostilities.

3. Q - Article 7 provides that the prisoners of war may not "renounce the rights secured to them by the present Convention." Does the prisoner of war have a "right" to be sent back against his will?

A - NO. The prisoner of war has a right to go back but the Convention does not require him to do so if he fears persecution and the detaining power is willing to grant asylum. The Convention is to protect, not persecute, prisoners. Asylum is a firm principle of law.

4. Q - Does asylum really apply to prisoners of war?

A - YES. The governments at the Geneva Conference of 1949 showed clearly that they knew it did, and that they did not intend to prevent its continuing to apply.

It had been applied in practice, special agreement and general peace treaty by long-continued common consent.

5. Q - Has asylum been refused to prisoners of war?

A - YES. Circumstances may sometimes prevent a detaining power from granting asylum. Although detaining powers have sometimes done so, it has only been where compelling considerations override the strong moral urge to exercise the right to grant asylum.

6. Q - Does international practice clearly support the position that there is an option to grant asylum if there are precedents both for granting asylum, and for forcibly repatriating prisoners who have sought not to go and have asked for asylum?

A - YES. The position is that the detaining power has an

A - NO. As long as a prisoner remains in camp, as long as he remains subject to the control of a detaining power, or until he regains his full freedom after the end of active hostilities, the prisoner of war has a right to return as well as to seek asylum. Although he may express his desire one way or the other while still in camp, he remains free to change his mind. While at some point the POW might have to make a final decision that he would continue to resist repatriation, he will not be required to do this until completely outside the control of any of the warring powers.

## ARTICLE 119

SUBSTANCE

Establishes conditions under which repatriation is to be effected, safeguarding personal safety, well-being, and property of prisoners.

Permits completion of trial and serving of sentence prior to repatriation in criminal (not disciplinary) cases.

Calls for agreement establishing commissions to search for dispersed prisoners.

PRESENT TEXT

"Repatriation shall be effected in conditions similar to those laid down in Articles 46 to 48 inclusive of the present Convention for the transfer of prisoners of war, having regard to the provisions of Article 118 and to those of the following paragraphs.

"On repatriation, any articles of value impounded from prisoners of war under Article 18, and any foreign currency which has not been converted into the currency of the Detaining Power, shall be restored to them. Articles of value and foreign currency which, for any reason whatever, are not restored to prisoners of war on repatriation, shall be despatched to the Information Bureau set up under Article 122.

"Prisoners of war shall be allowed to take with them their personal effects, and any correspondence and parcels which have arrived for them. The weight of such baggage may be limited, if the conditions of repatriation so require, to what each prisoner can reasonably carry. Each prisoner shall in all cases be authorized to carry at least twenty-five kilograms.

"The other personal effects of the repatriated prisoners shall be left in the charge of the Detaining Power which shall have them forwarded to him as soon as it has concluded an agreement to this effect, regulating the conditions of transport and the payment of the costs involved, with the Power on which the prisoner depends.

"Prisoners of war against whom criminal proceedings for an indictable offence are pending may be detained until the end of such proceedings, and, if necessary, until the completion of the punishment. The same shall apply to prisoners of war already convicted for an indictable offence.

"Parties to the conflict shall communicate to each other the names of any prisoners of war who are detained until the end of the proceedings or until punishment has been completed.

"By agreement between the Parties to the conflict, commissions shall be established for the purpose of searching for dispersed prisoners of war and of assuring their repatriation with the least possible delay.

#### PREVIOUS TEXTS

##### Article 75 GPW 1929

"....Prisoners of war against whom a penal prosecution might be pending for a crime or an offense of municipal law may, however, be detained until the end of the proceedings and, if necessary, until the expiration of the punishment. The same shall be true of those sentenced for a crime or offense of municipal law.

"On agreement between the belligerents, commissions may be established for the purpose of searching for dispersed prisoners and assuring their repatriation."

(The first paragraph of Article 75 is replaced by Article 118 of the 1949 Convention.)

Article 119 complements Article 20 of the Regulations annexed to Convention No. IV of the Hague of 1907:

"After the conclusion of peace, the repatriation of prisoners of war shall take place as speedily as possible."

#### BACKGROUND

##### 1. Substantive Changes

While more elaborate and specific than the 1929 Convention, Article 119 does not represent any radical departure from past principle of practice.

##### 2. Drafting History

The texts of paragraphs 2 and 3 of Article 75 of the 1929 Geneva Convention were not changed by the Conference of Government Experts in 1947, although in its proposals the ICRC had pointed out that the phrase "crime or offense of municipal law" might not be perfectly clear. According to the ICRC, the intention of the drafters of the 1929 Convention had been to require repatriation of prisoners under trial or sentence by judicial (as well as disciplinary) process unless the offense would qualify as a criminal offense under ordinary municipal, as distinguished from military law. As the ICRC also



pointed out, a different rule applied under the 1929 Convention to repatriation during hostilities, since Article 53 would permit a prisoner to be held back for trial or completion of sentence whether his penal offense were of a purely military character or of a municipal law character.

At the Diplomatic Conference in 1949 attention focused on several problems:

- (1) How to achieve a balance between the interest of the prisoner in getting back his personal property and the interest of a detaining power in avoiding financial or logistical burdens;
- (2) Whether a system of priority for departure could usefully be stipulated on any basis other than such factors as location of camps and availability of transport;
- (3) What type of trial or punishment would justify a detaining power in holding back a prisoner.

On the first point, it will be seen that a compromise was struck.

On the second, the United Kingdom finally prevailed in its strong objection to the provision introduced at Stockholm regarding the order of departure.

As to the last point, the United States succeeded in removing references to crimes "at common law" as ambiguous. On the initiative of the Soviet Union, new language was finally worked out by a subcommittee and adopted in its present form. The Rapporteur of the Second Commission of the Conference explained the sense of his Commission prior to the work of the subcommittee:

"... I do not believe that those who drafted the Article intended that a prisoner should be detained because proceedings were being taken against him or because he was summoned to appear before a court for neglect of some obligation in civil law. The authors of this Article were thinking of a prisoner of war who is subject to criminal proceedings. . . ."  
IIB Final Record 318.



POSSIBLE QUESTIONS

1. Q. Does Article 119, or any other Article of the Convention, permit detention of necessary witnesses in pending prosecutions following hostilities?

A. It is believed that Detention for a "reasonable period" would be permissible, at least, until some means of developing a deposition were worked out.

2. Q. Does the term "criminal proceedings for an indictable offense" comprehend both "military" and "municipal" offenses?

A. It would seem to require, at the very least, more than a disciplinary offense.

## ARTICLE 120

SUBSTANCE

Requires detaining power, on death of a POW, to forward POW's will to protecting power (drawn in conformity with the legislation of country of origin) and death certificate (or lists) to POW Information Bureau, with particulars of death and burial (the latter to be preceded by medical examination). Detaining power also required to establish a Graves Registration Service, and may not disregard religious and honorable standards regarding burial, cremation, and care of graves, remains and records.

PRESENT TEXT

Wills of prisoners of war shall be drawn up so as to satisfy the conditions of validity required by the legislation of their country of origin, which will take steps to inform the Detaining Power of its requirements in this respect. At the request of the prisoner of war and, in all cases, after death, the will shall be transmitted without delay to the Protecting Power; a certified copy shall be sent to the Central Agency.

Death certificates, in the form annexed to the present Convention, or lists certified by a responsible officer, of all persons who die as prisoners of war shall be forwarded as rapidly as possible to the Prisoner of War Information Bureau established in accordance with Article 122. The death certificates or certified lists shall show particulars of identity as set out in the third paragraph of Article 17, and also the date and place of death, the cause of death, the date and place of burial and all particulars necessary to identify the graves.

The burial or cremation of a prisoner of war shall be preceded by a medical examination of the body with a view to confirming death and enabling a report to be made and, where necessary, establishing identity.

The detaining authorities shall ensure that prisoners of war who have died in captivity are honourably buried, if possible according to the rites of the religion to which they belonged, and that their graves are respected, suitably maintained and marked so as to be found at any time. Wherever possible, deceased prisoners of war who depended on the same Power shall be interred in the same place.

Deceased prisoners of war shall be buried in individual graves unless unavoidable circumstances require the use of collective graves. Bodies may be cremated only for imperative reasons of hygiene, on account of the religion of the deceased or in accordance with his express wish to this effect. In case of cremation, the fact shall be stated and the reasons given in the death certificate of the deceased.

In order that graves may always be found, all particulars of burials and graves shall be recorded with a Graves Registration Service established by the Detaining Power. Lists of graves and particulars of the prisoners of war interred in cemeteries and elsewhere shall be transmitted to the Power on which such prisoners of war depended. Responsibility for the care of these graves and for records of any subsequent moves of the bodies shall rest on the Power controlling the territory, if a Party to the present Convention. These provisions shall also apply to the ashes, which shall be kept by the Graves Registration Service until proper disposal thereof in accordance with the wishes of the home country.

#### PREVIOUS TEXTS

Article 120 complements the corresponding articles of Chapter II of the Regulations annexed to the Hague Conventions of 1899 and 1907. The 1907 text was:

"Article XIX. The wills of prisoners of war are received or drawn up in the same way as for soldiers of the national army.

"The same rules shall be observed regarding death certificates as well as for the burial of prisoners of war, due regard being paid to their grade and rank."

#### Article 76 GPW 1929

"Wills of prisoners of war shall be received and drawn up in the same way as for soldiers of the national army.

"The same rules shall be observed regarding death certificates.

"Belligerents shall see that prisoners of war dying in captivity are honorably buried and that the graves bear all due information, are respected and properly maintained."

BACKGROUND

Provisions dealing in similar fashion with treatment of the dead are found in Articles 16 and 17 of the Wounded and Sick, 19 and 20 of the Wounded and Sick (Sea), and 129 and 130 of the Civilian Conventions.

The first paragraph of Article 120, dealing with the preparation and transmission of wills, is to be read together with Article 77:

"Article 77

"The Detaining Powers shall provide all facilities for the transmission, through the Protecting Power or the Central Prisoners of War Agency provided for in Article 123, of instruments, papers or documents intended for prisoners of war or despatched by them, especially powers of attorney and wills.

"In all cases they shall facilitate the preparation and execution of such documents on behalf of prisoners of war; in particular, they shall allow them to consult a lawyer and shall take what measures are necessary for the authentication of their signatures."

Taken together, they oblige the Detaining Power to help and to permit a lawyer to help a POW prepare his will so that it will be valid under the law of his country of origin; require the latter to furnish necessary legal information and finally require that wills be forwarded, at a prisoner's request, or in any event on death, through the protecting power.

Although the first paragraph of Article 120 is phrased as an absolute requirement, the difficulties of the subject matter, the language of Article 77, and the legislative history indicate that the detaining power must facilitate the end in view, but clearly need not be a guarantor of the validity of the will, or for that matter, itself pay the lawyer. See, e.g., IIA Fin Rec. 375-377, IIB Fin Rec. 183-184, 321, 323-4.

PAST UNITED STATES PRACTICE

The provisions of War Department regulations governing the treatment of prisoners of war closely paralleled the requirements of the present Article (TM 19-500, Chapter II, Paragraphs 108 b, 109, 111).

## ARTICLE 121

SUBSTANCE

Requires, in case of death or serious injury of a prisoner of war caused by any other person (including a sentry or fellow prisoner ), an official inquiry and a report, with statements of witnesses, including POW's, to the Protecting Power.

Requires prosecution of the guilty.

PRESENT TEXT

Every death or serious injury of a prisoner of war caused or suspected to have been caused by a sentry, another prisoner of war, or any other person, as well as any death the cause of which is unknown, shall be immediately followed by an official enquiry by the Detaining Power.

A communication on this subject shall be sent immediately to the Protecting Power. Statements shall be taken from witnesses, especially from those who are prisoners of war, and a report including such statements shall be forwarded to the Protecting Power.

If the enquiry indicates the guilt of one or more persons, the Detaining Power shall take all measures for the prosecution of the person or persons responsible.

PREVIOUS TEXTS

None.

BACKGROUND1. Drafting History

Among the risks, Article 121 was intended to prevent barbarities under the rubric "killed while trying to escape". Report of Committee II, Diplomatic Conference of 1949, II A Final Record 574.

In its study preliminary to the Conference of Government Experts of 1947, the ICRC suggested, in connection with Article 2 of 1929 Convention requiring, inter alia, humane treatment and protection against violence, some explicit stipulation requiring protection against acts of fellow prisoners. The ICRC observed that while most states had taken the "necessary steps" in the past, these steps had in many cases proved inadequate. ICRC, Commission of Government Experts (1947), II Preliminary Documents submitted by the International Committee of the Red Cross 12-13.



The United Kingdom in Commission II of the Conference of Government Experts of 1947, following discussion of present Article 120 of the Convention, proposed the substance of present Article 121, recalling that such an agreement had been reached between the United Kingdom and Germany. ICRC, Conference d'experts gouvernementaux (Geneva 1947 III2 Proces-Verbaux, Commission II, 363-364. The proposal was generally supported by other governments, including the United States, Id. 378. The Conference reported the recommendation favorably. CICR, Rapport sur les travaux de la Conference d'experts gouvernementaux pour l'etude des Conventions protegeant les victimes de la guerre (Geneva 1947) 260-262. The ICRC proposed a suitable text to the Stockholm Conference of 1948, which was approved with some drafting changes by the Conference. (ICRC, Draft Convention relative to the Treatment of Prisoners of War, Working Document for the Diplomatic Conference (Geneva, 1949) 55.)

After some small changes by the Drafting Committee, including specific reference to other prisoners as witnesses, and inclusion of cases of death from unknown causes by decisions of Committee II, Article 121 was adopted by the Diplomatic Conference, IIB Final Record 321, IIA Final Record 365, 377, 400, 574.

## 2. Previous United States Practice

The United States followed the practice of impartial inquiry into deaths or serious injuries of prisoners of war and has adhered to the requirements of reporting as laid down in earlier conventions. The requirements of inquiry and prosecution were met, in practice, in World War II although in the Korean hostilities prosecutions were not carried out as a matter of policy.

ARTICLE 122SUBSTANCE

Requires, upon outbreak of conflict, establishment of an official prisoner of war information bureau by Parties to the conflict and by neutral Powers when appropriate, for the purpose of reporting to the Protecting Power the capture and final disposition of each prisoner of war, the answering of all inquiries concerning them and the collection and shipping to the interested Powers of personal effects of deceased and repatriated prisoners.

PRESENT TEXT

"Upon the outbreak of a conflict and in all cases of occupation, each of the Parties to the conflict shall institute an official Information Bureau for prisoners of war who are in its power. Neutral or non-belligerent Powers who may have received within their territory persons belonging to one of the categories referred to in Article 4, shall take the same action with respect to such persons. The Power concerned shall ensure that the Prisoners of War Information Bureau is provided with the necessary accommodation, equipment and staff to ensure its efficient working. It shall be at liberty to employ prisoners of war in such a Bureau under the conditions laid down in the Section of the present Convention dealing with work by prisoners of war.

"Within the shortest possible period, each of the Parties to the conflict shall give its Bureau the information referred to in the fourth, fifth and sixth paragraphs of this Article regarding any enemy person belonging to one of the categories referred to in Article 4, who has fallen into its power. Neutral or non-belligerent Powers shall take the same action with regard to persons belonging to such categories whom they have received within their territory.

"The Bureau shall immediately forward such information by the most rapid means to the Powers concerned, through the intermediary of the Protecting Powers and likewise of the Central Agency provided for in Article 123.

"This information shall make it possible quickly to advise the next of kin concerned. Subject to the provisions of Article 17, the information shall include, in so far as available to the Information Bureau, in respect of each prisoner of war, his surname, first names, rank, army, regimental, personal or serial number, place and full date of birth, indication of the Power on which he depends, first name of the father and maiden name of the mother, name and address of the person to be informed and the address to which correspondence for the prisoner may be sent.

"The Information Bureau shall receive from the various departments concerned information regarding transfers, releases, repatriations, escapes, admissions to hospital, and deaths, and shall transmit such information in the manner described in the third paragraph above.

"Likewise, information regarding the state of health of prisoners of war who are seriously ill or seriously wounded shall be supplied regularly, every week if possible.

"The Information Bureau shall also be responsible for replying to all enquiries sent to it concerning prisoners of war, including those who have died in captivity; it will make any enquiries necessary to obtain the information which is asked for if this is not in its possession.

"All written communications made by the Bureau shall be authenticated by a signature or a seal.

"The Information Bureau shall furthermore be charged with collecting all personal valuables, including sums in currencies other than that of the Detaining Power and documents of importance to the next of kin, left by prisoners of war who have been repatriated or released, or who have escaped or died, and shall forward the said valuables to the Powers concerned. Such articles shall be sent by the Bureau in sealed packets which shall be accompanied by statements giving clear and full particulars of the identity of the person to whom the articles belonged, and by a complete list of the contents of the parcel. Other personal effects of such prisoners of war shall be transmitted under arrangements agreed upon between the Parties to the conflict concerned."

#### PREVIOUS TEXTS

Paragraphs 1-4, 5, 7 and 9, Article 122 replace and complement Article 77, GPW 1929:

"Upon the outbreak of hostilities, each of the belligerent Powers, as well as the neutral Powers which have received belligerents, shall institute an official information bureau for prisoners of war who are within their territory.

"Within the shortest possible period, each of the belligerent Powers shall inform its information bureau of every capture of prisoners effected by its armies, giving it all the information regarding identity which it has, allowing it quickly to advise the families concerned, and informing it of the official addresses to which families may write to prisoners.

"The Information Bureau shall immediately forward all this information to the interested Powers, through the intervention, on one hand, of the protecting Powers and, on the other, of the central agency provided for in Article 79.

"The Information Bureau, being charged with replying to all inquiries about prisoners of war, shall receive from the various services concerned full information respecting interments and transfers, releases on parole, repatriations, escapes, stays in hospitals, deaths, as well as other information necessary to enable it to make out and keep up to date an individual return for each prisoner of war.

"The Bureau shall state in this return, in so far as is possible and subject to the provisions of Article 5: the



regimental number, given names and surname, date and place of birth, rank and unit of the interested party, the given name of the father and the name of the mother, the address of the person to be advised in case of accident, wounds, date and place of capture, internment wounding and death, as well as any other important information.

"Weekly lists containing all new information likely to facilitate the identification of each prisoner shall be transmitted to the interested Powers.

"At the conclusion of peace the individual return of the prisoner of war shall be delivered to the Power which he served.

"The Information Bureau shall further be bound to receive all objects of personal use, valuables, letters, pay vouchers, identification marks, etc., which are left by prisoners of war who have been repatriated, released on parole, escaped or died, and to transmit them to the countries interested."

## BACKGROUND

### I. Substantive Additions or Changes to 1929 POW Convention

The functions of the National Prisoner of War Information Bureaus as set forth in Article 77 of the 1929 Convention are largely retained in Article 122 of the 1949 Convention except that the requirement that "At the conclusion of peace the individual return of the prisoner of war shall be delivered to the Power which he served," is omitted in the new Convention. A new provision aims at ensuring the efficient working of the Bureaus by specifying that the Detaining Power must furnish necessary accommodations, equipment and staff, also the employment of prisoners of war in the Bureaus is authorized. A further provision specifies that the state of health of seriously sick and wounded prisoners will be forwarded regularly, every week if possible.

### II. Past Practice of the United States

War Department regulations, which governed the treatment of prisoners of war were in substantial accord with the provision of the present Article. An Enemy Prisoner of War Information Bureau was established at the outbreak of World War II. The Bureau was charged with the mission of discharging those functions set forth in Article 77 of the 1929 POW Convention.

### III. Diplomatic Conference at Geneva

Article 122 corresponds, with very slight changes, to Article 77 of the 1929 Convention. The function of the National Bureaus are defined in Article 122 as well as information concerning identity which they must furnish to the adverse party, for each prisoner. A new provision aims at ensuring the efficient working of the Bureaus, and for this purpose authorizes the Detaining Power to employ in its prisoners of war.

The final record of the Diplomatic conference at Geneva does not contain any discussion or comment with regard to the omission from the 1949 Convention of the requirement that the individual return of the prisoner be delivered to the Powers which they served at the conclusion of peace. The need in this regard, however, is believed to have been largely obviated by the provisions of Articles 54 and 66 which require that the Detaining Powers furnish each prisoner, and also forward to the Power on which he depends, certificates of illness, or injuries sustained, of treatment received and, upon termination of captivity, the credit balance due him.



## ARTICLE 123

SUBSTANCE

Requires establishment of a Central Prisoners of War Information Agency in a neutral country to collect and transmit to the interested Powers all information it may obtain with respect to prisoners of war. Powers whose nationals benefit by the services of the Central Agency are expected to provide necessary financial support.

PRESENT TEXT

"A Central Prisoners of War Information Agency shall be created in a neutral country. The International Committee of the Red Cross shall, if it deems necessary, propose to the Powers concerned the organization of such an Agency.

"The function of the Agency shall be to collect all the information it may obtain through official or private channels respecting prisoners of war, and to transmit it as rapidly as possible to the country of origin of the prisoners of war or to the Power on which they depend. It shall receive from the Parties to the conflict all facilities for effecting such transmissions.

"The High Contracting Parties, and in particular those whose nationals benefit by the services of the Central Agency, are requested to give the said Agency the financial aid it may require.

"The foregoing provisions shall in no way be interpreted as restricting the humanitarian activities of the International Committee of the Red Cross, or of the relief societies provided for in Article 125."

PREVIOUS TEXTArticle 79 GPW 1929

"A central information agency for prisoners of war shall be created in a neutral country. The International Committee of the Red Cross shall propose the organization of such an agency to the interested Powers, if it considers it necessary.

"The function of that agency shall be to centralize all information respecting prisoners, which it may obtain through official or private channels; it shall transmit it as quickly as possible to the country or origin of the prisoners or to the Power which they have served.

"These provisions must not be interpreted as restricting the humanitarian activity of the International Committee of the Red Cross."

BACKGROUNDSubstantive Changes

The 1949 Convention adds a provision that those Powers whose nationals benefit by the services of the Central Agency "are requested to give the said Agency the financial aid it may require."

Past Practices of the United States

Reimbursements made through the American Red Cross to the International Committee of the Red Cross for expenses incurred by the Committee during its fiscal years 1942-1946, inclusive, totalled over \$11,000,000. This amount was made up of (1) contributions from the American Red Cross and (2) payments made to the Committee through the American Red Cross (derived from the United States Government, other governments and Red Cross Societies, etc.).

"By two separate communications to Department of State, dated 11 March 1954 and 14 September 1954, the International Committee of the Red Cross requested that this Government furnish list of UN Forces prisoners of war "repatriated from North Korea," or "deceased in North Korea." The statement was made by the ICRC that ".... it is our Agency's recognized duty to gather all possible information on POWs or former POWs." The Department of the Army position on this matter with respect to United States personnel was that (a) no obligation to furnish the requested information was imposed by Article 123, (b) that such information should appropriately be forthcoming from the enemy, (c) that all notifications concerning the disposition of United States prisoners of war had already been made to properly interested persons and agencies and therefore there was no humanitarian purpose to be served by furnishing the requested information to the ICRC, and that such future inquiries, if any, as might be received by the ICRC concerning United States personnel should properly be forwarded to this Government for reply."

ARTICLE 123

POSSIBLE QUESTIONS

Q. By whom was the Central Prisoners of War Information Agency operated during World War II and the Korean Conflict?

A. The International Committee of the Red Cross.

Q. From what primary source should the Central Prisoners of War Information Agency expect to receive information concerning prisoners of war?

A. From the Detaining Power. Article 122 requires the forwarding of pertinent information in this regard by the National Prisoner of War Information Bureaus to the Central Agency.

Q. Does the present Article place any obligation on the Powers on which the prisoners depend to furnish information to the Central Agency concerning their own personnel held in enemy custody?

A. No. The function of the Central Agency is to collect information concerning prisoners of war for the purpose of transmitting such information as rapidly as possible to the Powers on which the prisoners depend. The Central Agency is actually a "clearing-house" established for the sole purpose of facilitating the exchange of information between belligerents. Obviously, the Agency has no functions to discharge with respect to information all ready in the hands of the Detaining Power.

ARTICLE 124SUBSTANCE

Provides that National Information Bureaus and the Central Information Agency shall enjoy free postage for mail and for such other exemptions from imports, customs and dues as are provided for by Article 74 of the 1949 Convention.

PRESENT TEXT

"The national Information Bureaux and the Central Information Agency shall enjoy free postage for mail, likewise all the exemptions provided for in Article 74, and further, so far as possible, exemption from telegraphic charges or, at least, greatly reduced rates."

PREVIOUS TEXTSArticle 80 GPW 1929

"Information bureaus shall enjoy the privilege of free postage on postal matter, as well as exemptions provided in Article 38."

BACKGROUND

1. Substantive Additions or Changes to 1929 POW Convention

The present Article retains the provisions of Article 80 of the 1929 Convention and, in addition, provides that the National Information Bureaus and the Central Information Agency shall be exempt from telegraphic charges or, at least enjoy greatly reduced rates.

2. Diplomatic Conference

Mr. Wilhelm (International Committee of the Red Cross) explained that Article 124 reproduced the substance of Article 80 of the 1929 Convention. One new question had, however, been included, namely, that of exemption from telegraphic charges, which it certainly appeared desirable to grant (partially if not wholly) both to the National Bureaus and to the Central Information Agency. During the last war the telegraph had frequently been the only possible means of communication between certain National Bureaus and the Central Prisoners of War Information Agency. (Vol. IIA, p. 300).



## ARTICLE 125

SUBSTANCE

Provides that, subject to security considerations of the Detaining Powers, representatives of religious organizations and relief societies shall receive from the Powers concerned necessary facilities for visiting prisoners and for distributing relief supplies. The number of such societies may be limited provided the effective operation of adequate relief to prisoners is not hindered.

PRESENT TEXT

Subject to the measures which the Detaining Powers may consider essential to ensure their security or to meet any other reasonable need, the representatives of religious organizations, relief societies, or any other organization assisting prisoners of war, shall receive from the said Powers, for themselves and their duly accredited agents, all necessary facilities for visiting the prisoners, for distributing relief supplies and material, from any source, intended for religious, educational or recreative purposes, and for assisting them in organizing their leisure time within the camps. Such societies or organizations may be constituted in the territory of the Detaining Power or in any other country, or they may have an international character.

The Detaining Power may limit the number of societies and organizations whose delegates are allowed to carry out their activities in its territory and under its supervision, on condition, however, that such limitation shall not hinder the effective operation of adequate relief to all prisoners of war.

The special position of the International Committee of the Red Cross in this field shall be recognized and respected at all times.

As soon as relief supplies or material intended for the above-mentioned purposes are handed over to prisoners of war, or very shortly afterwards, receipts for each consignment, signed by the prisoners' representative, shall be forwarded to the relief society or organization making the shipment. At the same time, receipts for these consignments shall be supplied by the administrative authorities responsible for guarding the prisoners.

PREVIOUS TEXTS

## Article 78, GPW 1929

"Relief societies for prisoners of war, which are properly constituted in accordance with the laws of their country and with the object of serving as the channel for charitable effort, shall receive from the belligerents, for themselves and their duly accredited agents, every facility for the efficient performance of their humane task within the bounds imposed by



military necessities. Agents of these societies may be admitted to the camps for the purpose of distributing relief, as also to the halting places of repatriated prisoners, if furnished with a personal permit by the military authorities, and on giving an undertaking in writing to comply with all measures of order and police which the latter may issue."

#### BACKGROUND

##### 1. Substantive Changes

The 1929 Geneva Convention provided for visits by relief societies to prisoner of war camps. The present Article extends this privilege to include the greatest possible number of organizations which may come to the relief of prisoners of war and especially religious organizations. Also a receipting system for relief supplies is established.

##### 2. Past Practice of the United States

Relief and religious organizations which gave aid and relief to prisoners of war during World War II included the International Committee of the Red Cross, the War Prisoners Aid of the Young Men's Christian Association, the National Catholic Welfare Conference, the Apostolic Delegation, the American Red Cross and many more. This assistance took the form of religious materials, food packets, medical supplies, clothing, books, recreational items, etc. Visits to the prisoner of War camps, particularly by representatives of the International Committee of the Red Cross and the Young Men's Christian Association, were permitted, not only in allied countries but also in German controlled areas and to a lesser extent in Japan.

##### 3. Drafting History

The present text of Article 125 brings up to date Article 78 of the 1929 Convention. The conception of recognized relief societies has been widened by the addition of the words "or any other organization assisting prisoners of war". Also religious organizations are classed with the relief societies assisting prisoners of war. The last paragraph defines the procedure for acknowledging receipt of relief parcels sent to prisoners of war.

## ARTICLE 126

SUBSTANCE

Defines the rights of representatives of the Protecting Power and the International Committee of the Red Cross.

PRESENT TEXT

Representatives or delegates of the Protecting Powers shall have permission to go to all places where prisoners of war may be, particularly to places of internment, imprisonment and labour, and shall have access to all premises occupied by prisoners of war; they shall also be allowed to go to the places of departure, passage and arrival of prisoners who are being transferred. They shall be able to interview the prisoners, and in particular the prisoners' representatives, without witnesses, either personally or through an interpreter.

Representatives and delegates of the Protecting Powers shall have full liberty to select the places they wish to visit. The duration and frequency of these visits shall not be restricted. Visits may not be prohibited except for reasons of imperative military necessity, and then only as an exceptional and temporary measure.

The Detaining Power and the Power on which the said prisoners of war depend may agree, if necessary, that compatriots of these prisoners of war be permitted to participate in the visits.

The delegates of the International Committee of the Red Cross shall enjoy the same prerogatives. The appointment of such delegates shall be submitted to the approval of the Power detaining the prisoners of war to be visited.

PREVIOUS TEXTSArticle 86 GPW 1929

"The High Contracting Parties recognize that the regular application of the present Convention will find a guaranty in the possibility of collaboration of the protecting Powers charged with safeguarding the interests of belligerents; in this respect, the protecting Powers may, besides their diplomatic personnel, appoint delegates from among their own nationals or from among the nationals or other neutral Powers. These delegates must be subject to the approval of the belligerent near which they exercise their mission.

"Representatives of the protecting Power or its accepted delegates shall be permitted to go to any place, without exception, where prisoners of war are interned. They shall have access to all places occupied by prisoners and may interview them, as a general rule without witnesses, personally or through interpreters.

"Belligerents shall so far as possible facilitate the task of representatives or accepted delegates of the protecting Power. The military authorities shall be informed of their visit.

"Belligerents may come to an agreement to allow persons of the same nationality as the prisoners to be permitted to take part in inspection trips."

#### BACKGROUND

##### 1. Substantive Changes

Provision is made for delegates of the International Committee of the Red Cross to enjoy the same prerogatives as representatives of the Protecting Powers. The appointment of such delegates is subject to the approval of the Detaining Power. Another innovation is that representatives are to have "full liberty" to select places they wished to visit.

##### 2. Past US Practices

Paragraph 169, Field Manual 27-10, 1 October 1940, adopted the text of the 1929 Convention as the regulation applicable to prisoners held by the U.S.

##### 3. Drafting History

The text proposed by the Stockholm Conference was adopted unanimously with only minor drafting changes and an omission of a paragraph which provided that the Detaining Power could authorize the representatives of other bodies to visit prisoners of war. That aspect was deemed to be more appropriately involved with Article 125.

COMMON ARTICLES

47, GWS  
48, GWS Sea  
127, GPW  
144, GC

SUBSTANCE

Provide for the dissemination of the texts of the Conventions as widely as possible within the respective countries of the contracting parties, and for military and civil instruction to familiarize the entire population with the principles.

PRESENT TEXT

"The High Contracting Parties undertake, in time of peace as in time of war to disseminate the text of the present Convention as widely as possible in their respective countries, and in particular, to include the study thereof in their programmes of military and, if possible, civil instruction, so that the principles thereof may become known to the entire population, in particular to the armed fighting forces, the medical personnel and the chaplains."

PREVIOUS TEXTS

Art. 27, GWS 1929

"The High Contracting Parties shall take the necessary steps to acquaint their troops, and particularly the protected personnel, with the provisions of this Convention, and to make them known to the people at large."

Art. 20, 1907 H.C.

"The signatory Powers shall take the necessary measures for bringing the provisions of the present Convention to the knowledge of their naval forces, and especially of the members entitled thereunder to immunity, and for making them known to the public."

Substantive Changes

- a. Provision is now included in POW and Civilian Conventions.
- b. Applicable in time of peace as well as war.
- c. Instruction of civilians if possible.

BACKGROUND

Mr. Pilloud (ICRC) pointed out that these articles were intended to satisfy the desire of many that the Convention should be more widely disseminated amongst the public and amongst those who had occasion to apply it or refer to its provisions.

The U.S. delegate proposed the insertion of the phrase "if possible" before the words "civil instruction" in order to take into account the constitutional limitations which affect certain governments in regard to public education. (Curriculum taught in State schools is a matter solely within the purview of the State concerned, and under the U. S. Constitution the Federal Government could not direct that certain courses be taught.)



COM. ART. 48, GWS  
49, GWS Sea  
128, GPW  
145, GC

#### SUBSTANCE

Provides that the Contracting Parties shall communicate to each other the official translations of the Convention and any implementing laws or regulations.

#### PRESENT TEXT

"The High Contracting Parties shall communicate to one another through the Swiss Federal Council and, during hostilities, through the Protecting Powers, the official translations of the present Convention, as well as the laws and regulations which they may adopt to ensure the application thereof.

#### PREVIOUS TEXTS

##### Article 85, GPW 1929

"The High Contracting Parties shall communicate to one another through the Swiss Federal Council, the official translations of the present convention, as well as of the laws and regulations which they may come to adopt to assure the application of the present Convention."

##### Article 21, Sec. 2, 1907 H. C.

"They will communicate to each other through the Netherland Government, the enactments for preventing such acts at the latest within five years of the ratification of the present Convention."

##### Article 29, Sec. 2, GWS 1929

"They shall communicate to one another through the Swiss Federal Council the measures taken with a view of such repression, not later than five years from the date of the ratification of the present Convention."

#### BACKGROUND

##### Substantive Changes

The substitution of Protecting Powers as the communicating agency during hostilities.

COM. ART. 49, 50 GWS  
50, 51 GWS Sea  
129, 130 GPW  
146, 147 GC

COMMON ARTICLES

49, 50 GWS  
50, 51 GWS Sea  
129, 130 GPW  
146, 147 GC

SUBSTANCE

Provides that the Contracting Parties shall enact any legislation necessary to provide effective penal sanctions for grave breaches of the Convention.

Requires Contracting Parties to search for persons alleged to have committed grave breaches and to bring such persons before their courts or hand them over to another Contracting Party for trial.

Specifies what acts shall constitute grave breaches.

PRESENT TEXT

Article 146 GC

The High Contracting Parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the present Convention defined in the following Article.

Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts. It may also, if it prefers, and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party has made out a prima facie case.

Each High Contracting Party shall take measures necessary for the suppression of all acts contrary to the provisions of the present Convention other than the grave breaches defined in the following Article.

In all circumstances, the accused persons shall benefit by safeguards of proper trial and defence, which shall not be less favourable than those provided by Article 105 and those following of the Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949.

Articles 50 GWS Sea, 129 GPW and 49 GWS are identical with the foregoing.

COM. ART. 49, 50 GWS  
50, 51 GWS Sea  
129, 130 GPW  
146, 147 GC

Article 147 GC

Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the present Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or wilfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.

(Compare: Article 50 GWS)

Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.

Articles 51 GWS Sea and 130 GPW are identical with Article 50 GWS.)

PREVIOUS TEXTS

Article 29, Sec. 1, GWS 1929

The Governments of the High Contracting Parties whose penal laws may not be adequate, shall likewise take or recommend to their legislatures the necessary measures to repress in time of war all acts in contravention of the provisions of the present Convention.

Article 21, 1907 H.C.

The signatory Powers likewise undertake to enact or to propose to their legislatures, if their criminal laws are inadequate, the measures necessary for checking in

COM. ART. 49, 50 GWS  
50, 51 GWS Sea  
129, 130 GPW  
146, 147 GC

time of war individual acts of pillage and ill-treatment in respect to the sick and wounded in the fleet, as well as for punishing, as an unjustifiable adoption of naval or military marks, the unauthorized use of the distinctive marks mentioned in Article 5 by vessels not protected by the present Convention.

#### SUBSTANTIVE CHANGES

The provisions in the second, third and fourth paragraphs of Article 146 are new. Article 147 is new.

#### BACKGROUND

Articles 146 and 147 of the Civilians Convention may be considered as illustrative of the common articles on "grave breaches". They expressly create an obligation to "enact any legislation necessary to provide effective penal sanctions" for "grave breaches". They do not constitute an international penal code. They establish which breaches of other articles of the Convention are grave and must be punishable under the civil or military codes of the parties to the Convention. American military tribunals, in accordance with existing legislation, are competent to try offenders whose acts might constitute "grave breaches", whether they may be of our own or of another country's armed services. When these tribunals might lack jurisdiction, as in cases involving American civilians or foreign non-hostile military personnel, the existing criminal laws of the United States, both Federal and State, and the fact that our obligation is in the alternative -- to try or to hand over\* -- make it extremely improbable that there would be any offender not subject to an appropriate procedure assuring penal enforcement. This question remains under study, and if a practical need should develop, the matter would be laid before the Congress.

At the beginning of the Geneva Diplomatic Conference of 1949, the ICRC presented, with the support of several West European delegations, what amounted to a codification of the legal principles applied at Nuremberg by the International Military Tribunal and other war crimes courts. The United States, with the United Kingdom, France and others, successfully opposed this proposal. Instead, the Special Committee proposed the present texts of Articles 49 and 50. The Soviet delegation proposed to substitute for the words "grave breaches" the words "serious crimes". This proposal was rejected on the basis that the Convention was not a penal statute and the term "crimes" or "offenses" was therefore

\* It should be noted that Articles 146 and 147 constitute a self-executing extradition treaty within the meaning of 18 USC 3184, and consequently our obligation to "hand over" would be surrounded by the customary extradition safeguards.



COM. ART. 49, 50 GWS  
50, 51 GWS Sea  
129, 130 GPW  
146, 147 GC

clearly inappropriate. The report of the Special Committee, as approved by the Joint Committee of the Conference, states:

The word "crime" instead of breach did not seem to be an improvement, nor could general agreement be reached at this stage regarding the notions of complicity, attempted violation, duress or legitimate defense or the plea "by orders of a superior". These should be left to the judges who apply the national laws.

The Diplomatic Conference is not here to work out international penal law. Bodies far more competent than we have tried to do it for years. (IIB Final Record 115)

The most extensive enumeration of grave breaches is that contained in Article 147 of the Civilian Convention, (set forth above). It will be observed that the grave breaches of Article 147 are expressly and solely breaches affecting persons and property protected by the Conventions, in contrast with the general sweep of the Charter of the International Military Tribunal at Nuremberg. Article 6(b) of the Charter, for example, reads:

"(b) War Crimes: Namely, violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment or deportation to slave labor or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity."

It is to be emphasized that the 'grave breaches' of Article 147 do not constitute general restrictions upon the use of modern combat weapons. For example, modern warfare unfortunately may often involve the killing of civilians and bombardment of property in proximity to military objectives.

The second paragraph of common article 49 (50, 129, 146) provides that every country which is a party to the conventions, even a country which is neutral in a particular conflict, is obligated to search for 'persons alleged to have committed, or to have ordered to be committed . . . grave breaches,' and to have provided in its own law for trying such persons in its own courts. 'It may also, if it prefers, and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party has made out a prima facie case.' In brief this provision would impose upon even a neutral country the duty to search for and try, or permit the extradition of, persons accused of 'grave breaches,' regardless of their nationality or the nationality of their victims. The purpose of this provision is to deprive such persons of the sanctuary which they have heretofore found in certain neutral countries.



COM. ART. 49, 50 GWS  
50, 51 GWS Sea  
129, 130 GPW  
146, 147 GC

The last paragraph of this common article provides that persons accused of 'grave breaches' shall be accorded "safeguards of proper trial and defence, which shall not be less favourable than those provided by Article 105 and those following" of the Prisoner of War Convention. Those articles assure an accused of such elements of procedural due process as the right to counsel, right of appeal, and prescribe minimum standards of penal treatment.

A proposal by the U.S.S.R. to insert a two-year time limit on the introduction of provisions into the domestic legislation covering the punishment of violations of the Convention was opposed by Mr. Yingling (U.S.A.) who stated that the United States Congress was an independent body, and could not be obligated to enact legislation within a specified period.

COMM. ART. 51  
52  
131  
148

COMMON ARTICLES

51, GWS  
52, GWS, Sea  
131, GPW  
148, GC

SUBSTANCE:

Provides that Parties may not absolve themselves or another Party for grave breaches of the Convention.

PRESENT TEXT:

Article 51, GWS

"No High Contracting Party shall be allowed to absolve itself or any other High Contracting Party of any liability incurred by itself or by another High Contracting Party in respect of breaches referred to in the preceding Article."

Articles 52 GWS Sea, 131 GPW and 148 GC are identical with the foregoing.

PREVIOUS TEXTS:

None.

BACKGROUND

This is a new provision inserted at the suggestion of the Italian Delegation, intended to render null and void, in advance, any contractual exemption by which a victor State could prevail upon the conquered State to cease to hold the victor responsible for any violations of the Conventions committed by the organs of the latter. Any clauses of this kind might render useless the prosecution of individual guilty persons, for where a State has obtained a promise that it shall not be held responsible, it would be extremely difficult to condemn an individual agent acting under its orders. This provision was the only means of ensuring that the compulsory character of the prosecution, as proclaimed in the preceding Articles should continue in force.

The scope of this Article is comparatively restricted. It does not cover special financial arrangements under which a State can finally liquidate a claim to damages by an agreed lump sum payment or a settlement in compensation. (IIB, Final Record, p. 133).

COMM. ART. 51  
52  
131  
148

Possible Questions

Q - If grave breaches are committed by members of the victorious forces, by whom would such persons be tried?

A - Common articles 49/50/129/146 require Parties to the Convention to bring persons who are alleged to have committed grave breaches before their own courts regardless of the nationality of the accused person.

COMM. ART. 52, GWS  
53, GWS Sea  
132, GPW  
149, GC

COMMON ARTICLES

52, GWS  
53, GWS Sea  
132, GPW  
149, GC

SUBSTANCE

Provides that upon the request of a Party to the conflict, an enquiry shall be instituted concerning any alleged violation of the Convention. Procedure for the enquiry shall be agreed upon by the Parties. If a violation is established, the Parties shall correct it with the least possible delay.

PRESENT TEXT

Article 52, GWS

"At the request of a Party to the conflict, an enquiry shall be instituted, in a manner to be decided between the interested Parties, concerning any alleged violation of the Convention.

If agreement has not been reached concerning the procedure for the enquiry, the Parties should agree on the choice of an umpire who will decide upon the procedure to be followed.

Once the violation has been established, the parties to the conflict shall put an end to it and shall repress it with the least possible delay."

Articles 53 GWS Sea, 132 GPW, and 149 GC are identical with the foregoing.

PREVIOUS TEXT

Article 30, GWS 1929

"At the request of a belligerent, an investigation must be held, in such manner as shall be agreed upon by the interested parties, concerning any alleged violation of the Convention; whenever such a violation is proved, the belligerents shall put an end to it and repress it as promptly as possible."

SUBSTANTIVE CHANGES

The provision for the appointment of an umpire is new.

BACKGROUND

No opposition was expressed to these articles.

GWS	ARTICLE 55
GWS (Sea)	ARTICLE 54
GPW	ARTICLE 133
GC	ARTICLE 150

#### SUBSTANCE

Establishes the languages of the Convention.

#### PRESENT TEXT

"The present Convention is established in English and French. Both texts are equally authentic.

"The Swiss Federal Council shall arrange for official translations of the Convention to be made in the Russian and Spanish languages."

#### PREVIOUS TEXTS

None.

#### BACKGROUND

The Article provides that the Convention shall be drawn up in English and French, and that both language versions are equally authentic. The 1929 Geneva conventions were concluded in French only, as French was still the leading diplomatic language at that time. The present provision conforms with recent international practice.

It is also provided in the Article that the Swiss Federal Council shall prepare official Russian and Spanish translations. This too is an innovation so far as the Geneva Conventions are concerned, and has the particular advantage of avoiding the production of a variety of different versions in the many Spanish-speaking countries. The official character of these translations resides in the fact that the source from which they are derived is specified in the Convention itself. The Russian and Spanish texts, however, are not authentic and should they vary from the English and French versions, the latter will prevail.



GWS	ARTICLE 59
GWS (Sea)	ARTICLE 58
GPW	ARTICLE 134

SUBSTANCE

Relation to previous conventions.

PRESENT TEXTS

"The present Convention replaces the Conventions of August 22, 1864, July 6, 1906, and July 27, 1929, in relations between the High Contracting Parties." (GWS Art. 59)

"The present Convention replaces the Xth Hague Convention of October 18, 1907, for the adaptation to Maritime Warfare of the principles of the Geneva Convention of 1906, in relations between the High Contracting Parties." (GWS sea Art. 58)

"The present Convention replaces the Convention of July 27, 1929, in relations between the High Contracting Parties." (GPW Art. 134)

PREVIOUS TEXTSArticle 34 GWS 1929

"The present Convention shall replace the Conventions of 22nd August, 1864, and the 6th July 1906, in relations between the High Contracting Parties."

Article 25 GWS sea 1907

"The present Convention, duly ratified, shall replace as between contracting Powers, the Convention of July 29, 1899, for the adaption to maritime warfare of the principles of the Geneva Convention.

"The Convention of 1899 remains in force as between the Powers which signed it but which do not also ratify the present Convention."

BACKGROUND

The object of this Article is to determine how the new rules are to succeed the old ones. By its terms, each 1949 Convention replaces the previous convention or conventions in relations between the contracting parties. That means that the new Convention will only have mandatory force between the states which are parties to it. The earlier convention will continue to bind, in their mutual relations, states which are party to them without being parties to

it. The earlier convention will continue to bind, in their mutual relations, states which are party to them without being parties to the 1949 convention. In the same way, they will govern the mutual relations between states which are parties to the earlier conventions only and those which are parties both to the 1949 Convention and an earlier one. It follows that any two states will be bound in their mutual relations by the most recent of the Geneva Conventions to which both are parties.

#### POSSIBLE QUESTIONS

Q - What would be the position with regard to two states, one of which is party to the 1949 Convention only and the other to one of the earlier conventions only.

A - In strict law, they are not bound in their mutual relations by any convention. Everything points, however, to the fact that a number of different conventions are not being considered, but successive versions of one and the same convention. The two states must therefore consider themselves bound, at any rate morally, by everything which is common to the two conventions, particularly with respect to the great humanitarian principles which they contain. An effort should be made to settle by special agreement matters dealt with differently in the two conventions; in the absence of such an agreement, the parties could apply the provisions which entailed the least extensive obligations.

ARTICLE 135SUBSTANCE

Provides that this Convention shall be complementary to Chapter II of the Hague Regulations in relations between Powers which are bound by the Hague Convention of 1899 or 1907 and which are parties to the present Convention.

PRESENT TEXT

"In the relations between the Powers which are bound by the Hague Convention respecting the Laws and Customs of War on Land, whether that of July 29, 1899, or that of October 18, 1907, and which are parties to the present Convention, this last Convention shall be complementary to Chapter II of the Regulations annexed to the above-mentioned Conventions of the Hague."

PREVIOUS TEXTSArticle 89 GPW 1929

"In the relations between Powers bound by Hague Convention respecting the laws and Customs of War on Land, whether it is a question of that of July 29, 1899, or that of October 8, 1907, and who participate in the present Convention, this latter shall complete Chapter II of the Regulations annexed to the said Hague Conventions."

BACKGROUND

## 1. Substantive Changes

None

## 2. Drafting History

Article 135 reproduces a provision of the 1929 Convention relative to the relations between this Convention and Chapter II of the Regulations annexed to the IVth Hague Convention.

GWS	ARTICLE 56
GWS (Sea)	ARTICLE 55
GPW	ARTICLE 136
GC	ARTICLE 151

SUBSTANCE

Signature of the Convention.

PRESENT TEXTS

"The present Convention, which bears the date of this day, is open to signature until February 12, 1950, in the name of the Powers represented at the Conference which opened at Geneva on April 21, 1949; furthermore, by Powers not represented at that Conference, but which are parties to the Geneva Conventions of 1864, 1906 or 1929 for the Relief of the Wounded and Sick in Armies in the Field." (GWS Art. 56)

"The present Convention, which bears the date of this day, is open to signature until February 12, 1950, in the name of the Powers represented at the Conference which opened at Geneva on April 21, 1949; furthermore, by Powers not represented at that Conference, but which are parties to the Xth Hague Convention of October 18, 1907, for the adaptation to Maritime Warfare of the principles of the Geneva Convention of 1906, or to the Geneva Conventions of 1864, 1906 or 1929 for the Relief of the Wounded and Sick in Armies in the Field." (GWS sea Art. 55)

"The present Convention, which bears the date of this day, is open to signature until February 12, 1950, in the name of the Powers represented at the Conference which opened at Geneva on April 21, 1949; furthermore, by Powers not represented at that Conference, but which are parties to the Convention of July 27, 1929." (GPW Art. 136)

"The present Convention, which bears the date of this day, is open to signature until February 12, 1950, in the name of the Powers represented at the Conference which opened at Geneva on April 21, 1949." (GC Art. 151)

PREVIOUS TEXTSArticle 31 GWS 1929

"The present Convention, which shall bear this day's date, may be signed, up to the 1st February, 1930, on behalf of all



the countries represented at the Conference which opened at Geneva on the 1st July, 1929, as well as by countries not represented at that Conference but which were parties to the Geneva Conventions of 1864 and 1906."

Article 90 GPW 1929

"The present Convention, which shall bear this day's date, may be signed up to the 1st February, 1930, on behalf of any of the countries represented at the Conference which opened at Geneva on the 1st July, 1929."

BACKGROUND

The procedure resorted to in order to make the Geneva Conventions a part of positive international law is the one normally employed — the so-called compound procedure. It comprises two successive stages; the formulation of the treaty and its entry into force. The first stage is complete when a final text has been drawn up and signed in the name of the various states concerned. The second stage involves ratification, deposit of ratifications, and entry into force subsequent to the deposit of the required number of ratifications.

It is the act of signature with which this Article is concerned. The Article provides that the Conventions shall bear the date of August 12, 1949, and that the Conventions shall be opened for signature until February 12, 1950 to all the States represented at the Geneva Conference of 1949; also to all other states absent from the Geneva Conference but parties to the various previous conventions concerned.

GWS	ARTICLE 57
GWS (Sea)	ARTICLE 56
GPW	ARTICLE 137
GC	ARTICLE 152

## SUBSTANCE

Ratification of the Convention.

## PRESENT TEXT

"The present Convention shall be ratified as soon as possible and the ratifications shall be deposited at Berne.

"A record shall be drawn up of the deposit of each instrument of ratification and certified copies of this record shall be transmitted by the Swiss Federal Council to all the Powers in whose name the Convention has been signed, or whose accession has been notified."

## PREVIOUS TEXTS

### Article 32 GWS 1929

"The present Convention shall be ratified as soon as possible.

"The ratifications shall be deposited at Berne.

"A procès-verbal of the deposit of each instrument of ratification shall be drawn up, one copy of which, certified to be correct, shall be transmitted by the Swiss Federal Council to the Governments of all countries on whose behalf the Convention has been signed, or whose accession has been notified."

### Article 23 GWS sea 1907

"The present Convention shall be ratified as soon as possible.

"The ratifications shall be deposited at The Hague.

"The first deposit of ratifications shall be recorded in a procès-verbal signed by the representatives of the Powers taking part therein and by the Netherland Minister for Foreign Affairs.

"Subsequent deposits of ratifications shall be made by means of a written notification addressed to the Netherland Government and accompanied by the instrument of ratification.

"A certified copy of the procès-verbal relative to the first deposit of ratifications, of the notifications mentioned in the preceding paragraph, as well as instruments of ratification, shall be at once sent by the Netherland Government through the diplomatic channel to the Powers invited to the Second Peace Conference, as well as to the other Powers which have adhered to the Convention. In the cases contemplated in the preceding paragraph the said Government shall inform them at the same time of the date on which it received the notification."

#### Article 91 GPW 1929

"The present Convention shall be ratified as soon as possible.

"The ratifications shall be deposited at Berne.

"In respect of the deposit of each instrument of ratification, a procès-verbal shall be drawn up, and a copy thereof, certified correct, shall be sent by the Swiss Federal Council to the Governments of all the countries on whose behalf the Convention has been signed or whose accession has been notified."

#### BACKGROUND

Ratification is the formal act by which a state finally accepts the Convention which has been signed at an earlier date by its plenipotentiaries. This act, performed by the competent body under the municipal law of each country, can alone give the Convention obligatory force and make it binding on the state. The ratification is made effective by the deposit of an instrument ratification. In accordance with normal practice, provision has been made for the deposit of ratifications with a Government which is made responsible for receiving them and for notifying the fact of their receipt. This task has been entrusted to the Swiss Federal Council, the traditional depositary of the Geneva Conventions, which is to draw up a record of the deposit of each instrument of ratification and transmit a certified copy of this record to signatory and acceding states.

GWS	ARTICLE 58
GWS (Sea)	ARTICLE 57
GPW	ARTICLE 138
GC	ARTICLE 153

### SUBSTANCE

Entry into force of the Convention.

### PRESENT TEXT

"The present Convention shall come into force six months after not less than two instruments of ratification have been deposited.

"Thereafter, it shall come into force for each High Contracting Party six months after the deposit of the instrument of ratification."

### PREVIOUS TEXTS

#### Article 33 GWS 1929 - Article 92 GPW 1929

"The present Convention shall come into force six months after not less than two instruments of ratification have been deposited.

"Thereafter, it shall enter into force for each High Contracting Party six months after the deposit of its instrument of ratification."

#### Article 26 GWS sea 1907

"The present Convention shall come into force, in the case of the Powers which were a party to the first deposit of ratifications, sixty days after the date of the procès-verbal of this deposit, and, in the case of the Powers which ratify subsequently or which adhere, sixty days after the notification of their ratification or of their adhesion has been received by the Netherland Government."

### BACKGROUND

The Convention is to enter into force six months after two instruments of ratification have been deposited. The Convention will enter into force, for each state which subsequently ratifies it, six months after the deposit of its instrument of ratification. The four Conventions first entered into force on October 21, 1950.

GWS	ARTICLE 60
GWS (Sea)	ARTICLE 59
GPW	ARTICLE 139
GC	ARTICLE 155

SUBSTANCE

Accession to the Convention.

PRESENT TEXT

"From the date of its coming into force, it shall be open to any Power in whose name the present Convention has not been signed, to accede to this Convention."

PREVIOUS TEXTSArticle 35 GWS 1929

"From the date of its coming into force, the present Convention shall be open to accession duly notified on behalf of any country on whose behalf this Convention has not been signed."

Article 24 GWS sea 1907

"Non-signatory Powers which have accepted the Geneva Convention of July 6, 1906, may adhere to the present Convention."

. . . . .

Article 93 GPW 1929

"As from the date of its entry into force, the present Convention shall be open to accession notified in respect of any country on whose behalf this Convention has not been signed."

BACKGROUND

Any Power which has not signed the Convention may accede to it at any time after entry into force of the Convention. The invitation is addressed to all states, whether they are or are not parties to one of the earlier conventions. Accession is exactly the same in its effect as ratification.



GWS	ARTICLE 61
GWS (Sea)	ARTICLE 60
GPW	ARTICLE 140
GC	ARTICLE 156

SUBSTANCE

Notification of accessions.

PRESENT TEXT

"Accessions shall be notified in writing to the Swiss Federal Council, and shall take effect six months after the date on which they are received.

"The Swiss Federal Council shall communicate the accessions to all the Powers in whose name the Convention has been signed, or whose accession has been notified."

PREVIOUS TEXTSArticle 36 GWS 1929

"Accessions shall be notified in writing to the Swiss Federal Council, and shall take effect six months after the date on which they are received.

"The Swiss Federal Council shall communicate the accessions to the Governments of all the countries on whose behalf the Convention has been signed or whose accession has been notified."

Article 24 GWS sea 1907

. . . . .

"The Power which desires to adhere notifies its intention to the Netherlands Government in writing, forwarding to it the act of adhesion, which shall be deposited in the Archives of the said Government.

"The said Government shall at once transmit to all the other Powers a duly certified copy of the notification as well as of the act of adhesion, mentioning the date on which it received the notification."

Article 94 GPW 1929

"Accessions shall be notified in writing to the Swiss Federal Council and shall take effect six months after the date on which they have been received.

"The Swiss Federal Council shall notify the accessions to the Governments of all countries on whose behalf the Convention has been signed or whose accession has been notified."

BACKGROUND

An accession operates in the same manner as a ratification. Like the latter, it takes effect six months after it has been deposited.

GWS	ARTICLE 62
GWS (Sea)	ARTICLE 61
GPW	ARTICLE 141
GC	ARTICLE 157

## SUBSTANCE

Immediate effect of the Convention in case of war or of any other armed conflict.

## PRESENT TEXT

"The situations provided for in Articles 2 and 3 shall give immediate effect to ratifications deposited and accessions notified by the Parties to the conflict before or after the beginning of hostilities or occupation. The Swiss Federal Council shall communicate by the quickest method any ratifications or accessions received from Parties to the conflict."

## PREVIOUS TEXTS

### Article 37 GWS 1929

"A state of war shall give immediate effect to ratifications deposited and accessions notified by the belligerent Powers before or after the outbreak of hostilities. The communication of ratifications or accessions received from Powers in a state of war shall be made by the Swiss Federal Council by the quickest method."

### Article 95 GPW 1929

"A state of war shall give immediate effect to ratifications deposited and to accessions notified by the belligerent Powers before or after the commencement of hostilities. The communication of ratifications or accessions received from Powers in a state of war shall be effected by the Swiss Federal Council by the quickest method."

## BACKGROUND

Should war break out, or a similar situation arise -- cases for which the Convention has been specifically designed -- it is obvious that the entry into force of the Convention cannot be subject to the six months waiting period which follows ratification or accession under normal peacetime conditions. A ratification

or the notification of an accession will therefore take effect immediately as far as the country or countries affected by such events are concerned. The Convention will enter into force from the outbreak of hostilities or the beginning of occupation if the ratification has already been deposited, or from the date of the deposit of the ratification if it is deposited later.

The 1929 convention contained a similar provision, but only referred to "a state of war". The 1949 text refers to Articles 2 and 3, thereby defining other situations in which the Convention is to be applied, namely, (1) any other armed conflict, even if a state of war is not recognized by one of the parties, (2) total or partial occupation of a territory, even if it meets with no armed resistance, and (3) armed conflicts not of an international character.

GWS	ARTICLE 63
GWS (Sea)	ARTICLE 62
GPW	ARTICLE 142
GC	ARTICLE 158

## SUBSTANCE

Denunciation of the Convention.

## PRESENT TEXT

"Each of the High Contracting Parties shall be at liberty to denounce the present Convention.

"The denunciation shall be notified in writing to the Swiss Federal Council, which shall transmit it to the Governments of all the High Contracting Parties.

"The denunciation shall take effect one year after the notification thereof has been made to the Swiss Federal Council. However, a denunciation of which notification has been made at a time when the denouncing Power is involved in a conflict shall not take effect until peace has been concluded, and until after operations connected with the release and repatriation of the persons protected by the present Convention have been terminated.

"The denunciation shall have effect only in respect of the denouncing Power. It shall in no way impair the obligations which the Parties to the conflict shall remain bound to fulfill by virtue of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity and the dictates of the public conscience."

## PREVIOUS TEXTS

### Article 38 GWS 1929

"Each of the High Contracting Parties shall be at liberty to denounce the present Convention. The denunciation shall not take effect until one year after the notification thereof in writing has been made to the Swiss Federal Council. The latter shall communicate such notification to the Governments of all the High Contracting Parties.

"The denunciation shall only have effect in respect of



the High Contracting Party which has made notification thereof.

"Moreover, this denunciation shall not take effect during a war in which the denouncing Power is involved. In such a case, the present Convention shall continue binding beyond the period of one year, until the conclusion of peace."

Article 27 GWS sea 1907

"In the event of one of the contracting Powers wishing to denounce the present Convention, the denunciation shall be notified in writing to the Netherland Government, which shall at once communicate a duly certified copy of the notification to all the other Powers, informing them at the same time of the date on which it was received.

"The denunciation shall only have effect in regard to the notifying Power, and one year after the notification has reached the Netherland Government."

Article 96 GPW 1929

"Each of the High Contracting Parties shall have the right to denounce the present Convention. The denunciation shall only take effect one year after notification thereof has been made in writing to the Swiss Federal Council. The latter shall communicate this notification to the Governments of all the High Contracting Parties.

"The denunciation shall only be valid in respect of the High Contracting Party which has made notification thereof.

"Such denunciation shall, moreover, not take effect during a war in which the denouncing Power is involved. In this case, the present Convention shall continue binding, beyond the period of one year, until the conclusion of peace and, in any case, until operations of repatriation shall have terminated."

BACKGROUND

The provision gives any contracting party the right to withdraw unilaterally from the Convention. In the absence of such a provision, a withdrawal would not be possible except by consent of the other contracting parties. The provision might be said to be a matter of form; no state has ever denounced any of the Geneva conventions.

Denunciation must be notified in writing to the Swiss Federal Council in its capacity as depositary of the Convention. The Federal Council will transmit them to the other contracting parties.

A denunciation will not take effect immediately. In peacetime, it will only take effect after one year has elapsed. Should the denouncing state be involved in a conflict, the denunciation will not take effect until peace has been concluded, or even where applicable, until the release and repatriation of protected persons is complete.

According to the actual letter of the convention, the prolongation of the waiting period only affects denunciation notified at the time when the denouncing state is involved in a conflict and not those notified before the conflict began, the latter being subject to a waiting period of one year. But the spirit of this Article indicates that it should be applied in a broader sense and that a denunciation notified less than a year before a conflict breaks out should also have its effect suspended until the end of the conflict in question. It is thus provided in the corresponding article of the 1929 convention. The commentary on the 1949 Wounded and Sick Convention published in 1952 by the International Committee of the Red Cross indicates that the restrictive character of the 1949 Convention in this regard would appear to be a drafting error.

The denunciation is to have effect only in respect of the denouncing state. The denunciation, however, is not to impair the obligations which the parties to the conflict remain bound to fulfill by virtue of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity, and the dictates of the public conscience. This provision is new and did not exist in the earlier conventions. The provision shows clearly that a state which denounces the Convention would nevertheless remain bound by the principles contained in it in so far as they are the expression of inalienable and universal rules of customary international law.

GWS	ARTICLE 64
GWS (Sea)	ARTICLE 63
GPW	ARTICLE 143
GC	ARTICLE 159

SUBSTANCE

Registration of the Convention with the United Nations.

PRESENT TEXT

"The Swiss Federal Council shall register the present Convention with the Secretariat of the United Nations. The Swiss Federal Council shall also inform the Secretariat of the United Nations of all ratifications, accessions and denunciations received by it with respect to the present Convention."

PREVIOUS TEXTSArticle 39 GWS 1929

"A certified copy of the present Convention shall be deposited in the Archives of the League of Nations by the Swiss Federal Council. Similarly, ratifications, accessions and denunciations which shall be notified to the Swiss Federal Council shall be communicated by them to the League of Nations."

Article 97 GPW 1929

"A copy of the present Convention, certified to be correct, shall be deposited by the Swiss Federal Council in the Archives of the League of Nations. Similarly, ratifications, accessions and denunciations notified to the Swiss Federal Council shall be communicated by them to the League of Nations."

BACKGROUND

Under Article 102 of the Charter of the United Nations, States members of the United Nations are obliged to have the international treaties which they conclude registered with the Secretariat of the United Nations. If this were not done, they would not be able to invoke them before an organ of the United Nations, and there is always the possibility that a dispute regarding the application or interpretation of the Convention may be brought before the International Court of Justice. Accordingly, the Swiss Federal Council, as

depository, is required to register the Convention with the Secretariat of the United Nations, and also to inform same of any ratifications, accessions, or denunciations received by the Federal Council.